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**SAN DIEGO COUNTY REGIONAL AIRPORT  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN DIEGO**

JOSE HERNANDEZ,  
 Plaintiff,

v.

SAN DIEGO COUNTY REGIONAL  
 AIRPORT AUTHORITY, a public entity;  
 and DOES 1 through 12, inclusive,  
 Defendants.

CASE NO. GIC871979

**DEFENDANT SAN DIEGO COUNTY  
 REGIONAL AIRPORT AUTHORITY'S  
 REPLY MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF ITS  
 MOTION FOR SUMMARY JUDGMENT OR,  
 IN THE ALTERNATIVE, SUMMARY  
 ADJUDICATION**

Date: November 16, 2007  
 Time: 1:30 p.m.  
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 Judge: Hon. Richard E. Strauss  
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 Trial Date: January 4, 2008

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REPLY MEMO OF POINTS AND AUTHORITIES  
 IN SUPPORT OF SUMMARY JUDGMENT  
 MOTION

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## I. INTRODUCTION

Hernandez' opposition ignores the undisputed facts of this case: The Authority terminated him after an outside investigator determined that he violated the Authority's Ethics Code. The investigation occurred because two of Hernandez' co-workers (who had no connection to Hernandez' alleged complaints) alerted the Authority's CEO to Hernandez' conduct. Against this backdrop of the Authority's compelling reason for terminating Hernandez' employment, he has simply failed to create a triable issue of fact that the real reason for the Authority's action was retaliation because he hasn't shown either that he had a reasonable belief his "complaints" involved unlawful conduct, or a connection between his "complaints" and his termination.

## II. THE AUTHORITY'S ADJUDICATIONS ARE PROPER

Each of the Authority's adjudications are proper. An adjudication may be granted when it completely disposes of a cause of action. (CCP § 437c(f)(1).) Adjudications 1-6 and 10-11 address Hernandez' cause of action as one wholly inseparable cause of action. These adjudications are proper because if any one of them is granted, Hernandez' entire first cause of action is eliminated.

In the alternative, the Authority set forth adjudications 7-9 and 12-24, directed to separate theories of liability contained within Hernandez' single cause of action, in which he alleges that the Authority terminated him for complaining about four separate and unique events. While Hernandez could have alleged each of those theories in separate causes of action, he lumped them into one cause of action. It is therefore appropriate to adjudicate each theory as if it was a separate cause of action. (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1853 [Where a plaintiff has lumped various theories into one cause of action, it is proper to adjudicate each separate theory of liability and treat it as a separate cause of action.].)<sup>1</sup>

Adjudications 12 through 23 all attack an element of Hernandez' prima facie case under Labor Code section 1102.5 as separate theories of liability. If any element of Hernandez' prima facie case under Labor Code section 1102.5 fails, then the entire cause of action or separate theory

<sup>1</sup> The Authority moved to strike each of the protected activities on independent grounds in the initial pleading stage. The Court denied the motion to strike because there was enough alleged in the complaint to withstand a motion to strike, but its ruling did not preclude the Authority from raising the same issues on summary judgment or adjudication.

1 of liability is disposed of and summary adjudication and/or judgment is proper. (See e.g. *Lyle v.*  
 2 *Warner Bros. Television Productions* (2006) 38 Cal.4<sup>th</sup> 264, 274.) Further, adjudications 7-9  
 3 address various subsections under Labor Code section 1102.5, which are inartfully lumped into one  
 4 cause of action. Granting of any of those adjudications will dispose of those separately cognizable  
 5 theories of liability as well. The Authority's adjudications are therefore properly constructed.

### 6 **III. HERNANDEZ' LABOR CODE SECTION 1102.5 CLAIM FAILS**

7 Hernandez has not met his burden of proving through admissible evidence: (1) that he  
 8 engaged in a protected activity by complaining about an unlawful activity; (2) a causal link between  
 9 any alleged protected activity; or (3) that the Authority's legitimate non-retaliatory business reason  
 10 was a pretext for retaliation. If any one of these prongs fail, then Hernandez' entire Labor Code  
 11 section 1102.5 claim fails and summary judgment is proper.

#### 12 **A. Hernandez Did Not Engage in a Protected Activity.**

13 In order to prove that he engaged in a protected activity Hernandez must demonstrate that he  
 14 made known information that he reasonably believed disclosed a violation of a state or federal  
 15 statute, rule, or regulation. (Lab. Code, § 1102.5, subd. (b).) Specifically, Hernandez must show  
 16 that he had a "reasonable belief" that the employment practice [he] protested was prohibited" under  
 17 a state or federal law. (*Clark County School Dist. v. Breeden* (2001) 532 U.S. 268, 271.)

#### 18 **1. Hernandez failed to provide any evidence of his belief regarding whether the Authority's actions were unlawful.**

19 Hernandez has a straightforward requirement in proving his retaliation claim: He must first  
 20 and foremost prove through admissible evidence that he believed he disclosed violations of state or  
 21 federal law. Hernandez has failed, however, to provide any evidence that he believed the  
 22 Authority's actions violated a law. His declaration vaguely states that he thought expenditures were  
 23 "gifts of public funds" or "unwarranted" but he does not state that he believed the alleged "gifts" or  
 24 "unwarranted" expenditures are unlawful. That is not to say that Hernandez must have known the  
 25 precise governing statute at the time he complained, but section 1102.5 minimally requires that he at  
 26 least believe (and reasonably so) the activities about which he complained are unlawful.

27 Although his attorneys argue quite fervently that the conduct that Hernandez allegedly  
 28 disclosed was unlawful, the Court cannot assume without any *evidence* that Hernandez knew or

1 believed that "gifts of public funds" were allegedly unlawful. In fact, even if everyone other than  
 2 Hernandez knows that something is unlawful, under section 1102.5 it is the belief of the disclosing  
 3 party that is dispositive. Without any evidence that Hernandez had a subjective belief that the  
 4 activity about which he complained was unlawful, his claim necessarily fails.

5 **2. Hernandez failed to articulate the violation of a federal or state statute.**

6 Even if Hernandez declared his subjective believe that the Authority's "gift of public funds"  
 7 was unlawful, section 1102.5 requires his belief to be reasonable, and Hernandez must identify a  
 8 statute or rule that supports his claim of unlawfulness. Hernandez has failed to meet this burden.

9 Prior to Hernandez' opposition to this motion, he relied on the Authority's Codes, the  
 10 "Contract" Code, the ADA, and certain Public Utilities Code sections to support his claim. (SAC  
 11 ¶¶ 11-14.) Hernandez apparently recognized those codes were inapplicable because his opposition  
 12 gives short shrift to the Authority's arguments regarding them. Instead, he now improperly relies on  
 13 new statutes.<sup>2</sup> However, these new statutes do not support his claim:

- 14 • **Article 16, section 6 of the California Constitution does not relate to Hernandez' alleged disclosures.**

15 Hernandez first argues he disclosed violations of Article 16, section 6 of the California  
 16 Constitution. This provision prohibits the *Legislature* from authorizing or making gifts of public  
 17 money. In contrast, Hernandez alleges that the Authority "gave" public funds away because he  
 18 believes that the Authority could have negotiated more favorable lease terms. Since the Authority is  
 19 not the *Legislature* nor does Hernandez allege legislative acts by the Authority, this section of the  
 20 Constitution does not apply and cannot form the basis of Hernandez' claim.

- 21 • **Government Code section 822**

22 Hernandez also argues that Government Code section 822 prohibits gifts of public funds,  
 23 even though this section merely provides: "A public employee is not liable for money stolen from

24 <sup>2</sup> It is improper for Hernandez to add additional code sections at this late date because summary judgment is  
 25 framed by the pleadings. (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640-641.) In a retaliation case, the  
 26 plaintiff must articulate in the complaint the specific code section and public policy that the employer  
 27 violated. (See *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1371 [plaintiff properly  
 28 cited to the code section that formed the basis for her public policy discharge case and thus properly framed  
 the issues for summary judgment].) Here, Hernandez improperly added new code sections in his opposition  
 and the Authority requests that the Court disregard these new found bases for Hernandez' complaints.



1 his official custody. Nothing in this section exonerates a public employee from liability if the loss  
 2 was sustained as a result of his own negligent or wrongful act or omission." On its face, this section  
 3 only applies to money that is stolen from a public employee's custody. Further, this section defines  
 4 circumstances where an employee may be immune; it does not create an affirmative duty on behalf  
 5 of public employers. Even still, Hernandez has not alleged that he disclosed any money stolen from  
 6 an official, negligently or otherwise. Accordingly, Government Code section 822 cannot support  
 7 Hernandez' section 1102.5 claim either.

8       • **Penal Code section 424 and Government Code section 6314**

9       Penal Code section 424 is also inapposite. Section 424 prohibits a public official from  
 10 appropriating public funds for his own use or for the use of another without legal authority.

11 Here, Hernandez alleges four protected activities in which he allegedly advised the Authority that it  
 12 entered into two expensive leases, approved one expensive restroom project, and that one vendor  
 13 double-billed the Authority. As to the leases and the restroom project, Enarson had the authority to  
 14 negotiate those terms and thus Penal Code section 424, which only applies to actions taken *without*  
 15 authority of law, does not apply. (Enarson Dec. ¶¶ 3-4.) Even if Enarson did not have authority,  
 16 there is no admissible evidence that Hernandez believed that Enarson lined his own pockets with  
 17 public funds<sup>3</sup>, or that Enarson appropriated public funds for the use of another without authority of  
 18 the law. Once again, Hernandez must show an independent statute that prohibits Enarson from  
 19 entering into the lease deals. He has not done so.

20       • **Public Utilities Code**

21 Hernandez also argues he disclosed violations of the Public Utilities Code, even though  
 22 those statutes do not relate to the disclosures at hand. First, Public Utilities Code section 170064(b)  
 23 merely states that the Authority may adopt standards to meet the needs of the airport's users, but it  
 24 does not impose an affirmative obligation on the Authority to do so. Further, subsection (c) of that  
 25 statute authorizes the Authority to conduct audits of the Port. Hernandez' alleged disclosures do not  
 26 implicate either of these provisions. Similarly, under Public Utilities Code section 170062(E), the

27 <sup>3</sup> Similarly Government Code section 6314 is inapposite because it only prohibits use of public funds for  
 28 personal use. Hernandez does not allege, for purposes of his protected activity under Labor Code section  
 1102.5, that he disclosed the personal receipt of public funds by any Airport Authority employee.



1 Authority is tasked with maximizing the revenues for enterprises on its property *to the extent*  
 2 *practicable*. Here, it is not a per se violation of the law to enter into an expensive lease, and there is  
 3 no indication that Hernandez believed that it was impractical to maximize revenues on the  
 4 properties.

5 • **General Dynamics Lease**

6 Hernandez now claims that the disclosure he made regarding the General Dynamics lease  
 7 related to the renegotiation of the lease price following the initial three year period set by statute.  
 8 As both parties agree, the lease terms for the first three years were set by statute - \$4,700,000 in  
 9 2003, \$6,700,000 in 2004 and \$8,700,000 in 2005. Following 2005, the annual rent would be level  
 10 based on the fair market value of the property as of January 1, 2006. Hernandez alleges that as part  
 11 of the renegotiation process, Hernandez advised Enarson that the fair market value of the lease was  
 12 \$2 million less than the \$8.7 million that the Authority paid under the statute. Apparently, Enarson  
 13 agreed in part with Hernandez because the ultimate lease terms agreed to as of January 1, 2006, was  
 14 \$6.75 million per year for a term of 63 years, or approximately \$2 million less than the \$8.7 million  
 15 the Authority paid under the statute. (Enarson Dec. ¶ 3.)

16 In sum, the statute set the lease payment in 2005 and thus Hernandez could not reasonably  
 17 believe that the Authority's compliance with that lease payment violated the law. As to 2006,  
 18 Hernandez *agreed* that the fair market value (or the potential revenues) justified a \$6.7 million lease  
 19 and that is precisely the lease that the Authority entered into. Thus, Hernandez could not have  
 20 reasonably believed that the \$6.75 million lease payment was unlawful since he recommended it.

21 • **Teledyne Ryan Disclosure**

22 Finally, Hernandez admits "it is unclear on the face of the statute what obligation, if any, the  
 23 Airport had to Teledyne Ryan." (Opp., 12:17-19.) If the statute is unclear, it cannot support  
 24 Hernandez' retaliation claim. (*Sequoia Ins. Co. v. Superior Court* (1993) 13 Cal.App.4<sup>th</sup> 1472,  
 25 1480 [applicable statutes must sufficiently describe "the type of prohibited conduct to enable an  
 employer to know the fundamental public policies that are expressed in that law"].)

26 **B. Hernandez Failed to Produce Admissible Evidence of a Causal Link Between His**  
 27 **Disclosures and the Termination.**

28 Even if Hernandez proves that he engaged in a protected activity, he must still produce

1 admissible evidence of a causal link between that activity and his termination. Hernandez failed to  
 2 make this link because neither his suspicions regarding Bowens' motivation, nor the proximity of  
 3 time between his last disclosure and the investigation are sufficient to create a triable issue of fact.

4 **1. Hernandez' speculation as to Bowens' motivation does not create a causal link.**

5 First, Hernandez opines that his disclosures were likely personally threatening to Bowens,  
 6 and thus there must be a causal link between his disclosures and his termination. However, mere  
 7 speculation about a decisionmaker's motive is insufficient to overcome summary judgment. (*Martin*  
 8 *v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1734 ["the discharged employee, to  
 9 avert summary judgment, must produce 'substantial responsive evidence' that the employer's  
 10 showing was untrue or pretextual. [citation.] For this purpose, speculation cannot be regarded as  
 11 substantial responsive evidence"]; *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 225;  
 12 *Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.)<sup>4</sup> Thus, Hernandez' speculation as to whether  
 13 Bowens felt personally threatened and motivated to retaliate against Hernandez does not create a  
 14 triable issue of material fact as a matter of law.

15 **2. Hernandez' complaints regarding LPI began in 2004, more than one year prior**  
 16 **to Hernandez' termination, negating any causal link.**

17 Although Hernandez now puts in a self-serving declaration as to the date of his complaints  
 18 of alleged overcharges by LPI in order to place the complaint within 30 days of the investigation, he  
 19 cannot avoid summary judgment by simply ignoring the admissions he made in his deposition.  
 20 (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22 [where "there is a clear and  
 21 unequivocal admission by the plaintiff ... in his deposition ... [the trial court is] forced to conclude  
 22 there is no substantial evidence of the existence of a triable issue of fact [notwithstanding a  
 23 contradictory declaration in opposition to summary judgment.]") It is undisputed that Hernandez  
 24 made the first disclosure regarding LPI's expenses in 2004, but the investigation that led to  
 25 Hernandez' termination was not initiated until over one year later in late 2005. (Defendant's  
 26 Undisputed Material Fact ("Def. UMF") 24-25.) As one court has pointed out, there is nothing

27 <sup>4</sup> FEHA and Title VII analysis framework are instructive for Labor Code section 1102.5 and wrongful  
 28 discharge claims. (*Abdel v. Ikon Office Solutions, Inc.* (N.D. Cal. Aug. 25, 2006, No. C-05-1685 JCS) \_\_  
 F.Supp.2d \_\_ [2006 WL 2474331, at \*10 fn. 5; *Morgan v. Regents* (2000) 88 Cal.App.4th 52, 69.)

1 "inherently suspicious" about an adverse employment action that occurs more than a year after  
 2 protected activity began even when the employee repeatedly complained over the entire time period,  
 3 and the timing of the first protected activity and the later adverse employment action might actually  
 4 be evidence *against* retaliation. (See *Mayberry v. Vought Aircraft Co.* (5th Cir. 1995) 55 F.3d 1086,  
 5 1092.) In this case as well, the timing negates causation because the adverse employment action  
 6 took place at least one year after the disclosures as to LPi began.

7 **3. There is no causal connection between the investigation and the complaints.**

8 Hernandez completely ignores the fact that the individuals who lodged the complaints that  
 9 initiated the Authority's investigation into Hernandez' conduct, Jim Prentice and Clifforine Massey,  
 10 knew nothing about Hernandez' complaints. Without a causal connection between Hernandez'  
 11 disclosures and the investigation that led to his termination, his claim fails.

12 **C. Hernandez Has Not Met His Burden of Demonstrating Pretext.**

13 Finally (and only if Hernandez proves through admissible evidence that he engaged in a  
 14 protected activity and that there is a causal link between his activity and his termination), the Court  
 15 must determine whether Hernandez has produced "specific, substantial" evidence of unlawful  
 16 pretext to survive summary judgment. (E.g., *Hersant v. Dept. of Social Svcs.* (1997) 57 Cal.App.4th  
 17 997, 1005.) Conjecture, speculation or mudslinging is not enough. (*Compton v. City of Santee*  
 18 (1993) 12 Cal.App.4th 591, 595-96; *Kerr v. Rose* (1990) 216 Cal.App.3d 1551, 1563-64.)

19 Although Hernandez tries to create a triable issue of fact as to pretext by quibbling with the  
 20 process used for the termination, these attacks are not sufficient evidence of pretext to overcome the  
 21 Authority's compelling non-retaliatory business reason for Hernandez' termination.

22 **1. Use of an outside investigator is not pretext.**

23 First, Hernandez argues that the fact that the Authority used an outside attorney investigator  
 24 to conduct the investigation is evidence of pretext because the Authority should have simply had a  
 25 conversation with Hernandez about his activities. There is nothing inherently pretextual or  
 26 unlawful about using an outside investigator, and the fact that the Authority used an outside  
 27 investigator is not specific, substantial evidence of pretext.

28 **2. Hernandez' opinion as to whether his acts warranted termination does not create a triable issue of fact as to pretext.**

Second, Hernandez implies the Authority made an incorrect termination decision because

1 according to Hernandez, his conduct did not violate the Authority's ethical rules. However,  
 2 Hernandez' disagreement with the soundness of the Authority's decision does not establish pretext.  
 3 (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 358 ["if non-discriminatory, [the employer]'s true  
 4 reasons need not necessarily have been wise or correct."]; *Kariotis v. Navistar Intern. Transp. Corp.*  
 5 (7th Cir. 1997) 131 F.3d 672, 676 [suggesting that proffered reasons, if "nondiscriminatory on their  
 6 face" and "honestly believed" by employer, will suffice even if "foolish or trivial or baseless"];  
 7 *Fuentes v. Perskie* (3d Cir. 1994) 32 F.3d 759, 765 [issue is discriminatory animus, not whether  
 8 employer's decision was "wrong or mistaken," or whether employer is "wise, shrewd, prudent, or  
 9 competent"].) As such, the question is not whether the Authority was wrong in determining that  
 10 Hernandez violated the Ethics Code. Instead, the critical inquiry is whether the Authority had  
 11 retaliatory animus in conducting the investigation and terminating Hernandez' employment.  
 12 Hernandez cannot prove such animus through any admissible evidence, and thus cannot carry his  
 13 ultimate burden of demonstrating pretext through specific, substantial admissible evidence.

14 **3. Hernandez has not identified similarly situated individuals to establish pretext.**

15 Hernandez also alleges that others regularly engaged in the same conduct as him, but the  
 16 Authority did not terminate those individuals. In order to use evidence of what happened to others  
 17 as pretext, Hernandez must produce admissible evidence that the compared employees are similarly  
 18 situated in all respects to him, including the same supervisor, subject to the same standards, and that  
 19 they engaged in the same conduct without differentiating circumstances. (*Mitchell v. Toledo Hosp.*  
 20 (6th Cir. 1992) 964 F.2d 577, 583.) Thus, Hernandez must show through admissible evidence that  
 21 other employees who had his same supervisor, who had to fill out Form 700 and comply with the  
 22 California Political Reform Act, and who received the exact same benefits from the Authority's  
 23 vendors, received different treatment than he did. (*Damon v. Fleming Supermarkets of Florida, Inc.*  
 24 (11th Cir. 1999) 196 F.3d 1354, 1363.) Hernandez has not met this burden.

25 Although there are loose allegations of others receiving occasional flight upgrades,  
 26 Hernandez produced no admissible evidence that anyone else received the level of benefits that the  
 27 investigator determined Hernandez received. Even further, there is no evidence that those who  
 28 allegedly received occasional benefits had the same supervisor or were subject to the same rules as

Hernandez. Finally, Hernandez produced no evidence that Bowens, who authorized Hernandez' investigation, knew about the alleged benefits that others received. Moreover, even if any of the employees were similarly situated, Hernandez cannot show that the Authority treated them differently since the Authority investigated allegations of improper receipt of benefits by others, just as it did with Hernandez. (Exh. 6.) Thus, Hernandez has failed to meet his burden of demonstrating a similarly situated individual who was treated differently than Hernandez.

**4. The Authority's failure to follow progressive discipline policy does not create pretext.**

Finally, Hernandez unsuccessfully attempts to create a triable issue of fact by arguing that the Authority was required to follow a progressive discipline system. However, this argument is contrary to Hernandez' own testimony and thus cannot create a triable issue. (*D'Amico, supra*, 11 Cal.3d at p. 21-22.) Hernandez admitted in his deposition that he was an at-will employee who could be terminated at any time, with or without cause. (Hernandez Depo. 115:21-116:6; Exh. 16.) This negates any supposed obligation of the Authority to use progressive discipline.

Even if we assume, for purposes of this motion only, that the Authority had a progressive discipline policy, an employer's failure to follow its policies or internal procedures is not, on its own, sufficient evidence of pretext. (*Guz, supra*, 24 Cal.4th 317, 377-78 (concurrence) [stating that "A mere failure to follow formal internal policies does not support a discrimination claim"]; *Randle v. City of Aurora* (10th Cir. 1995) 69 F.3d 441, 454 ["The mere fact that an employer failed to follow its own internal procedures does not necessarily suggest that the employer was motivated by illegal discriminatory intent or that the substantive reasons given by the employer for its employment decision were pretextual."])

Since Hernandez failed to prove his prima facie case and/or ultimately meet his burden of demonstrating pretext, Hernandez' claim fails and summary judgment is appropriate.

**IV. HERNANDEZ FAILED TO OVERCOME THE IMMUNITY IN SECTION 821.6**

Government Code section 821.6 provides an alternate ground for granting this motion. Plaintiff's reliance on *Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407 to defeat the investigatory immunity in section 821.6 is unavailing. *Shoemaker* held that section 821.6 did not provide immunity for a claim under Government Code section 19683 because (unlike FEHA or section

1 1102.5) section 19683 provides a remedy where a public employee uses official authority to harm  
 2 another public employee, and its broad stated purpose is to hold all state officers personally  
 3 accountable. (*Id.* at 1423.) Section 1102.5, on the other hand, is more like the FEHA interpreted in  
 4 *Caldwell v. Montoya* (1995) 10 Cal.4th 972 -- it is a statute of general application, sweeping  
 5 broadly across both the private and public sector. In addition, unlike section 19683, Labor Code  
 6 section 1102.5 does not create any personal liability. Therefore, nothing in section 1102.5  
 7 forecloses the immunity in Government Code section 821.6.

8 Hernandez also argues that section 821.6 only applies to civil service proceedings, but it is  
 9 well established that even an investigation of a public employee's personnel issue by an authorized  
 10 governmental officer is an administrative proceeding protected by section 821.6. (See e.g.,  
 11 *Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1436-37; *Summers v. City of*  
 12 *Cathedral City* (1990) 225 Cal.App.3d 1047, 1064; and *Caldwell*, 10 Cal.4th at pp. 978, 982.)

#### 13 V. HERNANDEZ FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES

14 Although Hernandez argues that Labor Code section 98.7 is permissive, rather than  
 15 mandatory, the only permissive portion of the statute is that a claimant can choose not to file a claim  
 16 with the Labor Commissioner, and thus decide not to pursue any litigation. However, where, as  
 17 here, the claimant ultimately plans on pursuing a claim in court, that litigant must first file a claim  
 18 with the Labor Commissioner. (See, e.g., *Neveu v. City of Fresno* (2005) 392 F.Supp.2d 1159,  
 19 1179-80 [motion to dismiss granted because litigant failed to file a complaint with the Labor  
 20 Commissioner prior to pursuing cause of action under Labor Code § 1102.5].)

#### 21 VI. CONCLUSION

22 The Authority respectfully requests that this Court grant summary judgment or, in the  
 23 alternative, summary adjudication, on each of Hernandez' claims.

24 Dated: November 9, 2007

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

25 By:

FRED M. PLEVIN

SANDRA L. MCDONOUGH

Attorneys for Defendant SAN DIEGO COUNTY  
 REGIONAL AIRPORT AUTHORITY



1 *Hernandez v. San Diego County Regional Airport Authority*  
 2 SDSC Case No. GIC871979

3 **PROOF OF PERSONAL SERVICE**

4 I, the undersigned, certify and declare that I am a citizen of the United States, over the age  
 5 of eighteen, employed in the County of San Diego, State of California, and not a party to the  
 6 within-entitled action. My business address is 4665 Park Blvd., San Diego, CA 92116.

7 On November 9, 2007 at \_\_\_\_\_ a.m./p.m., I served a true copy of the within:

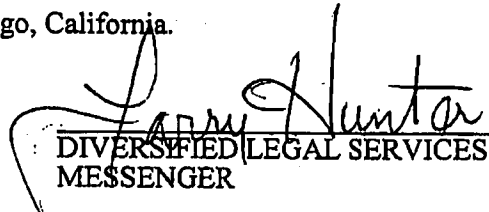
- 8 • **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S REPLY  
 9 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION  
 10 FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY  
 11 ADJUDICATION;**
- 12 • **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S  
 13 OPPOSITION TO PLAINTIFF'S SEPARATE STATEMENT OF ADDITIONAL  
 14 UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY  
 15 JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION;**
- 16 • **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S  
 17 CONCORDANCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN  
 18 THE ALTERNATIVE, SUMMARY ADJUDICATION;**
- 19 • **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S  
 20 RESPONSE TO PLAINTIFF JOSE HERNANDEZ' WRITTEN OBJECTIONS TO  
 21 EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY  
 22 JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION;**
- 23 • **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S  
 24 OBJECTION TO EVIDENCE SUBMITTED BY PLAINTIFF IN OPPOSITION TO  
 25 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE,  
 26 SUMMARY ADJUDICATION**
- 27 • **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S NOTICE  
 28 OF LODGMENT OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF ITS REPLY  
 TO THE MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE,  
 SUMMARY ADJUDICATION**

by delivering for personal service to the following:

Cathryn Chinn / Peter G. Friesen  
 1901 First Avenue, Suite 400  
 San Diego, CA 92101  
 Tel: 619-294-9183 / Fax: 619-295-4190  
 Attorneys for Plaintiff Jose Hernandez

I hereby certify that I am employed by Diversified Legal Services, at whose direction the personal service was made.

Executed November 9, 2007, at San Diego, California.

  
 LARRY HUNTER  
 DIVERSIFIED LEGAL SERVICES  
 MESSENGER





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16 Attorneys for Defendant  
 17 SAN DIEGO COUNTY REGIONAL AIRPORT  
 18 AUTHORITY

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 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN DIEGO

14 JOSE HERNANDEZ,  
 15  
 16 Plaintiff,  
 17  
 18 v.

19 SAN DIEGO COUNTY REGIONAL  
 20 AIRPORT AUTHORITY, a public entity,  
 21 and DOES 1 through 12, inclusive,  
 22  
 23 Defendants.

CASE NO. GIC871979

DEFENDANT SAN DIEGO COUNTY  
 REGIONAL AIRPORT AUTHORITY'S  
 OPPOSITION TO PLAINTIFF'S SEPARATE  
 STATEMENT OF ADDITIONAL  
 UNDISPUTED MATERIAL FACTS IN  
 SUPPORT OF MOTION FOR SUMMARY  
 JUDGMENT OR, IN THE ALTERNATIVE,  
 SUMMARY ADJUDICATION

Date: November 16, 2007  
 Time: 1:30 p.m.  
 Dept: 75  
 Judge: Hon. Richard E. Strauss  
 Complaint Filed: September 1, 2006  
 Trial Date: January 4, 2008

EXEMPT FROM FEES  
 GOVT. CODE § 6103

TO PLAINTIFF JOSE HERNANDEZ AND HIS ATTORNEYS OF RECORD:

Defendant San Diego County Regional Airport Authority (hereinafter referred to as "the  
 Authority") submits the following opposition to plaintiff's separate statement of additional

PAUL, PLEVIN,  
 SULLIVAN &  
 CONNAUGHTON LLP

OPPOSITION TO PLAINTIFF'S SEPARATE  
 STATEMENT OF ADDITIONAL UNDISPUTED  
 MATERIAL FACTS RE MSJ

undisputed material facts in support of its Motion for Summary Judgment as to plaintiff Jose Hernandez' Second Amended Complaint:

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>1. Plaintiff Jose Hernandez was hired in March 2001 as Manager of Ground Transportation. He then became Director of Landside Operations in 2003. His responsibilities included the management of airport parking and terminal facilities, and the development and adherence to a budget for the operation of those facilities.</p> <p>Decl. J. Hernandez ¶ 1<sup>2</sup>; Depo. J. Hernandez 104: 8; 397:14-16</p>	Not disputed for purposes of this motion only.
<p>2. He worked within a budget dictated by anticipated revenues from the management of Airport properties and facilities.</p> <p>Decl. J. Hernandez ¶ 1; Depo J. Hernandez 397:3-7; 417:13</p>	Not disputed for purposes of this motion only.
<p>3. Hernandez reported directly to Theodore Sexton, Vice President of Operations, who reported to Thella Bowens.</p> <p>Decl. J. Hernandez ¶ 1</p>	Not disputed for purposes of this motion only.
<p>4. Bryan Enarson, Vice President of Development was a close confidant of Thella Bowens', and the lead negotiator on land lease contracts made with General Dynamics and Teledyne Ryan.</p> <p>Decl. J. Hernandez ¶ 1; Depo. J. Hernandez 646:1-2; 388:8-12; 399:9-12; 400:1</p>	Objection. Lacks foundation as to whether Enarson was a close confidant of Bowens. (Evid. Code § 403.)
<p>5. One of Hernandez' duties was the evaluation of a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking, and revenues which would generate</p>	Not disputed for purposes of this motion only.

<sup>1</sup> By responding to the facts set forth by plaintiff in his separate statement, the Authority does not admit that any of these facts are material to this motion. Rather, the Authority contends that the only material facts are those set forth in its own separate statement filed with the moving papers.

<sup>2</sup> Hernandez has failed to abide by California Rule of Court by citing to the evidence that supports his "facts" by page and line numbers as required by the California Rules of Court, rule 3.1350(f). In fact, as for certain facts set forth herein, Hernandez refers to an entire declaration, without any pinpointed cite.

1	to the lease holder for 2100 stalls.	
2	Decl. J. Hernandez ¶ 2, Plaintiff's depo. 387:11-21, 389:15-17, 396:1-8	
3	6. Hernandez' understanding of the lease was	Not disputed for purposes of this motion only.
4	that the lease price was set by code for the	
5	years 2003, 2004 and 2005, and was thereafter	
6	subject to renegotiation.	
7	Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11	
8	7. Hernandez conducted an evaluation of the	Objection. Improper opinion (Evid. Code § 800); lacks foundation (Evid. Code § 403).
9	cash flow of the property when the lease came	
10	up for renegotiation, and determined that	
11	deficiencies in the property prevented from	
12	generating sufficient revenue to cover the	
13	lease price by at least \$2 million per year. The	
14	deficiency center on the discovery of toxic	
15	waste in the soil beneath the property which	
16	severely limited the development of the	
17	property for parking.	
18	Decl. J. Hernandez ¶ 2; Plaintiff's depo. 397:3-7	
19	8. Hernandez communicated the deficiency	Objection. It is improper to create a triable issue of fact by disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22 [where "there is a clear and unequivocal admission by the plaintiff ... in his deposition ... [the trial court is] forced to conclude there is no substantial evidence of the existence of a triable issue of fact [notwithstanding a contradictory declaration in opposition to summary judgment.]"
20	in the property to Sexton and Bowens, and	
21	that the continuation of the lease at its existing	
22	rate would amount to a gift of public money to	
23	the Port.	
24	Decl. J. Hernandez ¶ 2; Plaintiff's depo. 393:6-24	
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1		stating that he told Bowens as well.
2		Further, Hernandez' statement is inadmissible
3		hearsay to prove that the continuation of the
4		lease would amount to a gift of public money.
5		Further, although Hernandez does not state that
6		the gift of funds was illegal, or that he believed
7		the gift was illegal, to the extent that this
8		statement is construed to be a legal conclusion,
9		it is improper. (Evid. Code § 800.)
10	9. Sexton and Bowens refused to renegotiate the terms of the lease. Enarson, then speaking on Bowens' behalf, justified the lease amount by stating, "that was the price for Thella's (Bowens') freedom."	Objection. Hearsay (Evid. Code § 1200.); Lacks foundation as to how Hernandez knows that Enarson spoke on Bowens' behalf. (Evid. Code § 403.)
11	Decl. J. Hernandez ¶ 3; Plaintiff's depo. 393:6-24; 393:21-24; 394:17-25	
12	10. Another of Hernandez' duties was the evaluation of a lease from the Port of property located at the west side of the Airport. (The Teledyne Ryan property) The lease of that property likewise contemplated the generation of revenues to cover the lease through its use as a parking lot. The lease had been negotiated by Enarson and was not subject to renegotiation.	Not disputed for purposes of this motion only.
13	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 388:8-12	
14	11. Hernandez discovered this property was likewise contaminated and only a small portion of it was usable.	Not disputed for purposes of this motion only.
15	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 389:19-22, 390:3-5, 396:20-25	
16	12. The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million.	Objection. Lacks foundation (Evid. Code § 403); improper opinion (Evid. Code § 800).
17	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 407:2-408:2, 409:3-6	
18	13. Hernandez then informed Sexton, Enarson and Bowens that the lease constituted an unwarranted expenditure of public money to the Port of over \$3 million per year.	Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Hearsay. (Evid. Code § 1200.) Improper Opinion. (Evid. Code § 800.)
19	Decl. J. Hernandez ¶ 4; Plaintiff's depo.	It is improper to create a triable issue of fact by

1	417:14-22, 418:3-10	disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22.
2		
3		Hernandez admitted in his deposition that he
4		only complained to Ted Sexton and the
5		Teledyne Task Force about the Teledyne Ryan
6		lease. (Hernandez Depo. 410:3-413:18;
7		522:25-523:5 [Exh. 2].) Hernandez further
8		testified that although Thella Bowens had an
9		open door policy, he would never go to her
10		office and utilize the open door policy
11		(Hernandez Depo. 644:3-8 [Exh. 2]), and that
12		the only person he felt he could go to was Ted
13		Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).
14		Since Hernandez admitted that he only
15		informed Sexton and the Teledyne Ryan Task
16		Force about the Teledyne Ryan lease, he cannot
17		now create a triable issue of fact by alleging in
18		his declaration that he also told Bowens.
19	14. Another of Hernandez' duties was to	Not disputed for purposes of this motion only.
20	oversee the construction and/or maintenance	
21	of public facilities at the terminals, including	
22	public restrooms. Hernandez attempted to	
23	expand the size of the public restrooms to	
24	alleviate overcrowding in the east terminal	
25	and bring them into compliance with the state	
26	requirements that they be accessible by wheel	
27	chair, as required by the Americans with	
28	Disabilities Act (ADA).	
	Decl. J. Hernandez ¶5; Plaintiff's depo.	
	349:23-350:5, 352:3-353:8, 336:20-21,	
	337:17-19	
	15. He needed to annex 30 sq. ft. space from a	Objection. Lacks Foundation. (Evid. Code §
	concessionaire in order to comply with ADA	403.) Lacks Personal Knowledge. (Evid. Code
	requirements, but was told he could not do so	§ 702.) Improper Legal Conclusion. (Evid.
	by Enarson because Enarson had made	Code § 800); Hearsay. (Evid. Code § 1200.)
	handshake agreements with the	Vague as to "he".
	concessionaires.	
	Decl. J. Hernandez ¶ 5; Plaintiff's depo.	
	333:10-17, 335:4-8, 339:6-8, 336:20-21,	
	343:20-25	
	16. He told Sexton, Enarson and Bowens that	Lacks Foundation. (Evid. Code § 403.) Lacks
	he did not believe Enarson had the authority to	Personal Knowledge. (Evid. Code § 702.)
	enter into such agreements with the	Hearsay. (Evid. Code § 1200.) Improper
	concessionaires, and that Enarson's	Opinion. (Evid. Code § 800).
	enforcement of the agreements constituted a	
	gift to the concessionaires.	This statement is hearsay if offered to prove
	Decl. J. Hernandez ¶ 5; Plaintiff's depo.	that Hernandez did not believe that Enarson
		had the authority to enter into agreements.



1	335:17-18; 336:1; 354:6-9; 368:10-16; 377:1-4	Further, Hernandez fails to lay foundation and state facts to show that he has personal knowledge of the alleged agreements.
2		
3		Further, although Hernandez does not state that the gift was illegal, or that he believed the gift was illegal, to the extent that this statement is construed to be a legal conclusion, it is improper. (Evid. Code § 800.)
4		
5		
6		Finally, it is improper to create a triable issue of fact by disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22.
7		
8		Hernandez admitted in his deposition that he only complained to Ted Sexton and a handful of others regarding the restroom project. (Hernandez Depo. 354:6-8; 375:17-21; 522:25-523:5 [Exh. 2].) Hernandez further testified that although Thella Bowens had an open door policy, he would never go to her office and utilize the open door policy. (Hernandez Depo. 644:3-8.) Finally, Hernandez testified that the only person that he felt he could complain to was Ted. (Hernandez Depo. 644:9-16.)
9		
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15		Since Hernandez admitted that he only informed Sexton, the terminal operations committee and the architect about the Restroom Project, he cannot now create a triable issue of fact by alleging in his declaration that he also told Bowens.
16		
17		
18	17. Another of Hernandez' duties was to help negotiate and monitor contracts for the management of parking services. The low bidder (based on "projected" reimbursable expenses) on a contract to manage the Airport's parking lots was Lindbergh Parking Incorporated (LPI).	Not disputed for purposes of this motion only.
19		
20		
21	Decl. J. Hernandez ¶ 6	
22		
23	18. Its bid was so low that Hernandez – who had managed parking himself – suspected the bid was insincere. He thereafter closely monitored the performance of the contract and noted LPI was overcharging the Authority approximately \$1 million to 1.5 million per year. This estimate was based, among other things, on the fact that LPI (1) did not lease new shuttle transportation vehicles as stated in its bid (but instead used older shuttles owned by LPI); (2) was seeking reimbursement for an unnecessary management position	Not disputed for purposes of this motion only.
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28		



1	(owner/manager being paid for management work he did not perform); and (3) double-	
2	billing the Authority for workers' compensation insurance.	
3	Decl. J. Hernandez ¶ 6; Plaintiff's Depo.	
4	478:16-22; 481:1-4; 483:2-6	
5	19. Hernandez reported these overcharges to	It is improper to create a triable issue of fact by
6	Sexton, Enarson and Bowens, in October	disputing prior testimony. <i>D'Amico v. Board</i>
7	2005 and placed LPI on a 90-day timetable to	<i>of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-
8	explain and justify all the expenses. He	22.
9	informed Sexton, Enarson and Bowens that	Hernandez admitted in his deposition that he
10	the LPI contract constituted an unwarranted	only complained to Ted Sexton and Andrew
11	expenditure of public money to LPI.	McIntyre regarding LPI. (Hernandez Depo.
12	Decl. J. Hernandez ¶ 7; Plaintiff's Depo.	493:24-494:8; 498:25-499:11; 501:3-8; 503:5-
13	505:11-23; 506:10-23; 508:7-13; 511:16-23	504:6; 522:4-24 [Exh. 2].) Hernandez further
14		testified that although Thella Bowens had an
15		open door policy, he would never go to her
16		office and utilize the open door policy
17		(Hernandez Depo. 644:3-8 [Exh. 2]), and that
18		the only person he felt he could go to was Ted
19		Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).
20		Since Hernandez admitted that he only
21		informed Sexton and McIntyre about LPI, he
22		cannot now create a triable issue of fact by
23		alleging in his declaration that he also told
24		Bowens.
25		Hernandez first made the disclosure regarding
26		LPI's expenses in 2004. (Hernandez 493:24-
27		495:15 [Hernandez made his first disclosure at
28		the three-month or six-month submittal];
		Sexton Dec. 3:15-17 [the LPI contract began in
		January 2004].)
19	20. The negotiating agent on behalf of LPI –	Not disputed for purposes of this motion.
20	Elizabeth Stump-Moore – was, however, a	
21	friend of Bowens'.	
22	Decl. J. Hernandez ¶ 7; Plaintiff's Depo.	
23	488:25; 489:19-25; 490:10-15	
24	21. On November 2, 2005, Bowens engaged a	Objection. The second sentence lacks
25	law firm to investigate Hernandez for "ethics"	foundation and personal knowledge. (Evid.
26	violations associated with the receipt of	Code §§ 403 and 702.)
27	benefits from the Authority's vendors. This	
28	was the first occasion in the history of the	Hernandez' declaration does not state that this
	Authority that a law firm was retained to	was the first time the Authority retained a law
	investigate an employee for alleged ethics	firm to investigate ethics violations. Rather,
	violations.	Hernandez states in his declaration that this
	Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3	was the first time <i>that he was aware of</i> that
		anyone was questioned regarding receipt of
		tickets.

1	22. The law firm, per report submitted by	Objection to the extent that this is a partial and
2	Patrick Swan, Esq., concluded Hernandez	incomplete summary of the findings in the
3	received (1) free rounds of golf; (2) airline	report.
4	tickets to Hawaii; and (3) charger football	
5	tickets, the value of which placed Hernandez	
6	in violation of the Ethics Code applicable to	
7	Authority employees.	
8	Decl. P. Swan	
9	23. Bowens claims to have terminated	Not disputed for purposes of this motion.
10	Hernandez' employment based on the	
11	conclusions in the report.	
12	Decl. T. Bowens ¶ 9	
13	24. With regard to the "free rounds of golf,"	Objection. Irrelevant. (Evid. Code § 350.)
14	Hernandez cleared the trip with his boss,	
15	Sexton, before going, after disclosing the	
16	nature of the outing and that the golf rounds	
17	were supplied by Mike Parrish.	
18	Decl. J. Hernandez ¶ 9; Plaintiff's depo.	
19	158:18-22; 168:5-24	
20	25. In the process, Sexton admitted he had	Objection. Hearsay. (Evid. Code § 1200.)
21	attended the same golf outing under similar	
22	circumstances.	
23	Decl. J. Hernandez ¶ 9	
24	26. Hernandez compensated Parrish for the	Objection. Lacks foundation; irrelevant.
25	round by buying Parrish's lunch and dinner	(Evid. Code §§ 350 and 403.)
26	and by making gift contributions for the raffle.	The declaration of Pat Swan does not establish
27	The net personal value to Hernandez was	the alleged fact presented.
28	negative by over \$200.	
	Decl. J. Hernandez ¶ 9; Decl. P. Swan;	
	Plaintiff's depo. 159:14-19; 163:3-13; 164:10-	
	14	
	27. Hernandez had a strong social relationship	Not disputed for purposes of this motion.
	with Parrish, which included joint family	
	outings and gatherings, dinners, barbecues and	
	sporting events.	
	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl.	
	M. Parrish ¶ 2	
	28. With regard to the Hawaii ticket, ticketing	Objection. Lacks foundation and is vague as to
	benefits were regarded by management as	who in "management" regarded ticketing
	normal benefit of their workplace, and that	benefits as a normal benefit of the workplace.
	Sexton assigned Hernandez responsibility on	(Evid. Code § 403.) Further, none of the cited
	frequent occasions to obtain ticket upgrades	evidence states that ticketing benefits were a

1	for various employees and board members. Hernandez specifically discussed whether the practice was ethically acceptable and Sexton replied it was.	normal benefit of the workplace, or that Hernandez discussed whether the practice was ethically acceptable.
2		
3	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	Hearsay. (Evid. Code § 1200.)
4	Plaintiff's depo. 240:1-25; 602:20-25; 609:1-611:25	
5		
6	29. Notwithstanding the practice among Hernandez' superiors to receive passes and upgrades, Hernandez' receipt of those benefits was limited to gifts from personal friends. The tickets on Southwest came from Parrish. The tickets on Hawaiian Air came from Janet Nix, another personal friend, who told him she gave tickets like those to all kinds of friends having nothing to do with business.	Objection. Improper argument and opinion; lacks foundation. (Evid. Code §§ 403 and 800.) Further, although Hernandez may have received benefits from friends, those friends were also employees of the Authority's vendors. (Hernandez Depo. 191:8-20; 198:8-200:17; 280:1-14; and 281:6-12 [Exh. 1].)
7		
8	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
9	Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶ 3	
10		
11		
12	30. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed.	Objection. Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.)
13		
14		
15	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ;	
16	Plaintiff's Depo. 280:15-20, 23-25; 281:1-2; Decl. M. Parrish par. 3	
17		
18	31. With regard to the football tickets, ACE parking did not have a contractor or vendor agreement of any sort with the Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005; (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPI") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPI. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
19	Decl. J. Hernandez ¶ 12; Decl. P. Swan;	
20	Plaintiff's Depo. 268:1-4; 272:5-9	
21		
22		
23	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends from Hernandez' prior employment relationship with ACE Parking.	Not disputed for purposes of this motion only.
24		
25		
26	Decl. J. Hernandez ¶ 12; Decl. P. Swan	
27		
28	33. During Swan's interviews with Hernandez, he expressed no interest in the fact that Parrish and Hernandez were close	Objection. Hearsay. (Evid. Code § 1200.)

1	personal friends.	
2	Decl. J. Hernandez ¶ 13	
3	34. He avoided discussion of the tendency of	Objection. Vague as to "he." Hearsay. (Evid.
4	other employees such as Bowens and Sexton	Code § 1200.)
5	to make active and aggressive use of their	Lacks foundation. (Evid. Code § 403.)
6	positions to acquire ticketing upgrades and	Hernandez has not established that employees
7	benefits worth thousands of dollars.	"made active and aggressive use of their
8	Decl. J. Hernandez ¶ 13	positions to acquire ticketing upgrades and
9		benefits worth thousands of dollars."
10	35. When Hernandez attempted to explain	Objection. Hearsay. (Evid. Code § 1200.)
11	these friendships and practices, Swan cut him	
12	off and would state that he was not interested	
13	in the nature of those friendships and what the	
14	office practice was.	
15	Decl. J. Hernandez ¶ 13	
16	36. Hernandez had previously received	Not disputed for purposes of this motion only.
17	outstanding performance evaluations.	
18	Decl. J. Hernandez ¶ 14; Plaintiff's Depo.	
19	786:9-18	
20	37. The Authority did, in fact, have a	This "fact" is contrary to Hernandez' own
21	progressive disciplinary policy set forth in	testimony and thus cannot create a triable issue
22	writing, which emphasizes the Authority's	of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-
23	commitment to preserve employment through	22.) Hernandez admitted in his deposition that
24	pre-termination warnings and training.	he was an at-will employee and that he could
25	Decl. J. Hernandez ¶ 14; Plaintiff's Depo.	be terminated at any time, with or without
26	317:14-16	cause. (Hernandez Depo. 115:21-116:6; Exh.
27		16.) If he could be terminated at any time, then
28		the Authority was under no obligation to
		progressively discipline Hernandez. Further,
		this fact lacks foundation because the cited
		testimony does not establish that the alleged
		policy is in writing.
	38. That the Authority failed to adhere to this	Objection. Lacks foundation.
	policy and instead routed the matter to an	
	expensive and contentious law firm is a truly	
	extraordinary decision.	
	Decl. J. Hernandez ¶ 14	
	39. Ace Parking did not have a direct service	Objection. Lacks foundation. Hernandez knew
	agreement with the Airport Authority. Ace	that Ace Parking tried to obtain a business
	did not have any sort of a business	relationship with the Authority in January
	relationship with the Airport Authority.	2005. (Hernandez Depo. 151:4-18 [Exh. 1].)
	Plaintiff's depo. 149:15-20; 150:20-25	Even prior to that, Lindbergh Parking, Inc.
		("LPi") was a vendor doing business with the
		Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the

1		owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
2		
3	40. Ted Sexton, Vice-President of Operations	Objection. Lacks foundation and personal
4	at the Authority, requested Hernandez obtain	knowledge as to whether the Authority paid for
5	Ace Parking passes for Authority employees.	the Ace passes. (Evid. Code §§ 403 and 702.)
6	The Authority did not pay for the Ace passes.	
7	Plaintiff's depo. 134:25; 135:11-17	
8		
9	41. Ted Sexton told Hernandez it would be	Objection. Lacks foundation. (Evid. Code §
10	okay to go to the Southwest Airline Golf	403.) Hearsay. (Evid. Code § 1200.)
11	Tournaments. Sexton knew he was a guest of	
12	Southwest's.	
13	Plaintiff's depo. 158:18-22; 168:5-8, 12-13,	
14	18, 21-24	
15		
16	42. Hernandez had absolutely never received	Not disputed for purposes of this motion only.
17	free food from the concessions in the Airport	
18	terminals.	
19	Plaintiff's depo. 201:16-18	
20		
21	43. To this day Hernandez still stands by the	Objection. Lacks foundation. (Evid. Code §
22	fact that most of the items on the conflict-of-	403.)
23	interest state form should not have been	
24	disclosed.	Hernandez' deposition was in December 2006,
25	Plaintiff's depo. 284:11-15	almost one year ago. Therefore, the stated
26		evidence does not support Hernandez' opinion
27		of the items on the conflict of interest form as
28		of today.
	44. Ted Sexton told Hernandez to write	Objection. Vague as to "he." Hearsay. (Evid.
	everything on the form, whether he thought it	Code § 1200.)
	proper to do so or not.	
	Plaintiff's depo. 293:14-20	
	45. Ted Sexton told Hernandez to report any	Objection. Hearsay. (Evid. Code § 1200.)
	Ace Parking item, even though Ace does not	Lacks foundation. (Evid. Code § 403.)
	have a direct service agreement with the	Hernandez knew that Ace Parking tried to
	Authority Parking.	obtain a business relationship with the
	Plaintiff's depo. 268:1-5; 274:12-14; 267:14-	Authority in January 2005. (Hernandez Depo.
	18; 268:8-13	151:4-18 [Exh. 1].) Even prior to that,
		Lindbergh Parking, Inc. ("LPi") was a vendor
		doing business with the Authority. ( <i>Id.</i> at
		127:19-22.) Scott Jones, the owner of Ace
		Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-
		19, 127:10-128:2.)
	46. Sexton told Hernandez if he did not put	Objection. Hearsay. (Evid. Code § 1200.)
	this information on the form there would be	



1	ramifications. There would be legal	
2	ramifications whether Hernandez did it or not,	
3	whether he believed it was right or wrong.	
4	Plaintiff's depo. 268:8-13; 268:19-20; 270:3-7	
5	47. Sexton spoke on behalf of the Airport	Objection. Lacks foundation and lacks
6	Authority, not as an individual. Sexton said	personal knowledge. (Evid. Code §§ 403 and
7	people at the vice-president level would be	702.) Hernandez was the one who held the
8	looking at that documentation. Whether	belief that Sexton spoke on behalf of the
9	Hernandez thought it was right or not, people	Airport Authority, not as an individual; Sexton
10	would be looking to make sure he filled it in.	did not make this assertion.
11	Plaintiff's depo. 270:14-19; 267:19-25;	Hearsay. (Evid. Code § 1200.)
12	270:24-25; 271:1-2; 271:9-11	
13	48. Hernandez' reason for submitting it was	Irrelevant. (Evid. Code § 350.) The reason for
14	threats or intimidation from not only Ted	submitting the form does not negate that
15	[Sexton], but the investigators.	Hernandez admitted that he received the
16	Plaintiff's depo. 278:15-1749.	benefits set forth on the form. (Hernandez
17		Depo. 280:1-282:12 [Exh. 2].)
18	49. In late 2004, early 2005, Ace Parking was	Objection. Lacks foundation. Hernandez knew
19	not working to take over the parking contract.	that Ace Parking tried to obtain a business
20	It was Scott Jones, as an individual, trying to	relationship with the Authority in January
21	buy the shares of Maurice Gray. There's a	2005. (Hernandez Depo. 151:4-18 [Exh. 1].)
22	clear distinction. This contract is not with	Even prior to that, Lindbergh Parking, Inc.
23	Ace Parking. It is with Scott Jones, as an	("LPi") was a vendor doing business with the
24	individual.	Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the
25	Plaintiff's depo. 272:5-6, 6-9	owner of Ace Parking, is a 40% owner of LPi.
26		( <i>Id.</i> at 75:18-19, 127:10-128:2.)
27	50. Hernandez purchased tickets that were not	Objection. Lacks foundation and personal
28	available to the public for the Authority's	knowledge. (Evid. Code §§ 403 and 702.)
29	general counsel, Bret Lobner. The tickets	Hearsay. (Evid. Code § 1200.)
30	were blocked-out and unavailable for the box	
31	office to sell. Hernandez told Lobner they	
32	were unavailable to the public. Ted Sexton	
33	told Hernandez to get the tickets for Lobner.	
34	Hernandez was not already going to the	
35	stadium t purchase tickets that day.	
36	Plaintiff's depo. 237:17-25; 238:10-12, 13-16,	
37	17-22, 23-25; 240:5-10, 15-23; 242:19-25;	
38	249:18-25; 250:1	
39	51. Clifforine Massey was an unreliable and	Objection. Lacks foundation and irrelevant.
40	undependable employee who refused to come	(Evid. Code §§ 350, 403 and 702.)
41	to work. She was repeatedly counseled by	
42	Hernandez and placed on a disciplinary work	
43	plan by Human Resources. Massey refused to	
44	abide by the work plan and quit.	

1	Plaintiff's depo. 315:13-25; 316:1-25; 317:1-2; 318:1-25	
2	52. Jim Prentice was a gossip who reported to Sexton. Prentice stirred-up gossip and chaos. He was an unreliable and undependable employee. Sexton referred to him as "that little shit."	Objection. Lacks foundation; hearsay; irrelevant. (Evid. Code §§ 350, 403, 702 and 1200.)
3	Plaintiff's depo. 323:17-25; 324:9-25; 542:6-25; 543:1-25; 544:1-5	
4	53. The restroom project was stalled from 2002 through 2005 because V.P. Bryan Enarson was unwilling to request the redaction of 30 sq. ft. from Host. It still hasn't been built.	Objection. Lacks foundation and personal knowledge; hearsay; irrelevant. (Evid. Code §§ 350, 403, 702 and 1200.) Whether the project is stalled is not material to this motion.
5	Plaintiff's depo. 341:9-13; 347:8-9	
6	54. It was V.P. Enarson's unwillingness to take that space away that made it impossible for the Authority to comply with ADA requirements of a 2% grade from the floor up to the restrooms and then landing requirements.	Objection. Lacks foundation; improper opinion; irrelevant. (Evid. Code §§ 350, 403, 702 and 800.)
7	Plaintiff's depo. 343:20-25; 344:1	
8	55. Hernandez raised the ADA issues with Sexton. He briefed it time and time and time again to Ted, sometimes even on a daily, sometimes on a weekly, basis. Hernandez raised the ADA issue with Sexton because it was his number one priority. He raised the issue with Ted 50 to 100 times over a two-year period	Undisputed for purposes of this motion only.
9	Plaintiff's depo. 354:6-9; 357:13, 17-18; 359:19-24; 373:3-23.	
10	56. Sexton was afraid to bring up the issue to Bryan Enarson. He just didn't want to deal with him.	Objection. Lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
11	Plaintiff's depo. 374:2-4	
12	57. Hernandez told Sexton the Authority was paying too much for the General Dynamics property. They would lose a couple million dollars, which would come out of the general budget and affect the terminal operations. This was prior to the ratification of the agreement.	Not disputed for purposes of this motion only.
13		



1	Plaintiff's depo. 393:4-24	
2	58. Ted Sexton said Thella was willing to overpay for that property so that she didn't have to be under the control of the Port District.	Objection. Lacks foundation and personal knowledge; improper opinion; hearsay. (Evid. Code §§ 350, 403, 702, 800 and 1200.)
3		
4	Plaintiff's depo. 394:17-25	
5		
6	59. At every budget meeting it would come back up that they needed to make an adjustment for the \$2 million additional lease payments on the General Dynamics lease.	Objection. Vague; lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
7		
8	Plaintiff's depo. 397:3-7	
9	60. Hernandez told Ted Sexton that the Authority had paid too much and he didn't believe it was right or was in the Authority's best interest that it pay those type of rents on the property.	Not disputed for purposes of this motion only.
10		
11		
12	Plaintiff's depo. 399:3-8	
13	61. The Authority put together a Teledyne Ryan redevelopment plan and noticed more and more and more environmental concerns to the point that it was close to \$30 million in remediation costs.	Not disputed for purposes of this motion only.
14		
15		
16	Plaintiff's depo. 407:23-25; 408:1-2	
17	62. As a public entity, it is necessary to make sure that what is paid can be recovered because it's not just Authority funds, it's airline funds. Proper due diligence must be followed when in agreeing to enter into an extended lease in this manner. When the Authority's own environmental assessments were done, those numbers greatly shot through the roof.	Objection. Improper opinion and legal conclusion; lacks foundation. (Evid. Code §§ 403, 702 and 800.)
18		
19		
20		
21		
22	Plaintiff's depo. 408:17-25; 410:1-2	
23	63. Hernandez had continuing conversations with Ted Sexton because the Authority overpaid for the property and he wanted to understand why the Authority would continue to pay \$3 million for the whole property when he could use only 5 acres of it.	Objection. Lacks foundation and personal knowledge; improper opinion. (Evid. Code §§ 403, 702 and 800.)
24		
25		
26		
27	Plaintiff's depo. 410:3-25	
28	64. Hernandez was a vocal opponent because he was coupled with overpayment on the	Objection. Lacks foundation; improper opinion. (Evid. Code §§ 403, 702 and 800.)

1	General Dynamics side and now add that to	Hearsay. (Evid. Code § 1200.)
2	one overpayment on Teledyne Ryan. And	
3	now the Authority is in the hole between \$3	
4	and \$4 million a year in overpayment on two	
5	leases. Entering into a 66-year agreement for	
6	\$3 million a year is almost \$200 million.	
7	Plaintiff's depo. 417:13-22; 418:3-10	
8	65. The cost for remediation is \$30 million	Objection. Lacks foundation; improper
9	with the settlement requiring the Port to pay	opinion. (Evid. Code §§ 403, 702 and 800.)
10	\$9.7 million, with the Port having the ability	
11	within the \$9.7 million to recover expenses	
12	incurred against that money.	
13	Plaintiff's depo. 424:19-23; 427:7-12	
14	66. Today that property is used for only 350	Objection. Lacks foundation; improper
15	parking spaces for which the Authority pays	opinion. (Evid. Code §§ 403, 702 and 800.)
16	the \$3 million. The property will not be	Hernandez' deposition was in December 2006,
17	remediated by 2010; it won't happen. It will	almost one year ago. This fact has no bearing
18	not be remediated in whole by 2010.	on what the property is used for today.
19	Plaintiff's depo. 466:19-20; 468:18-19; 469:1-	
20	2; 469:23-25; 470:3-5	
21	67. Hernandez had ongoing conversations	Not disputed for purposes of this motion only,
22	with Ted Sexton about his objections to the	but improper hearsay to the extent that it is
23	Authority's failure to properly assess the	used to establish that the Authority failed to
24	environmental aspects prior to entering the	properly assess environmental aspects.
25	lease agreement and without understanding	
26	the full effects on the Authority's operating	
27	budget. There were many conversations with	
28	Sexton.	
	Plaintiff's depo. 470:16-25; 471:7-11	
	68. LPI submitted an operating figure of \$1.1	Objection. Lacks foundation because
	million and the Authority understood those	Hernandez cannot opine as to what "the
	actual operating expenses would be about a	Authority understood;" vague and ambiguous.
	half a million dollars more a year. Hernandez	(Evid. Code §§ 403 and 702.)
	told Ted Sexton immediately that there was a	
	large variation between their submitted	
	operating expenses and actual expense	
	numbers.	
	Plaintiff's depo. 478:16-22; 481:1-4; 482:9-	
	21; 494:2-25	
	69. LPI double-billed the Authority for	Objection. Improper opinion; lacks foundation.
	workers' compensation costs starting in 2000	(Evid. Code §§ 403, 702 and 800.)
	and again in 2005.	
	Plaintiff's depo. 500:18-24	

1	70. The Authority took credit for the double-billing. It was around the beginning of 2005. The Authority took full credit for those LPI expenses and it was easily over \$100,000.00.	Not disputed for purposes of this motion only.
2		
3	Plaintiff's depo. 502:8-25; 504:1-2; 508:7-13	
4		
5	71. Hernandez kept Ted Sexton informed.	Not disputed for purposes of this motion only.
6	Plaintiff's depo. 501:5-8; 502:20-21; 514:13-25; 515:5-10	
7		
8	72. Maurice Grey (LPI's owner) signs the expense documents to the Authority under penalty of perjury.	Not disputed for purposes of this motion only.
9	Plaintiff's depo. 506:10-23	
10		
11	73. Ted Sexton requested that Hernandez upgrade Thella's flight multiple times at no charge to Thella.	Objection. Irrelevant; hearsay. (Evid. Code §§ 350 and 1200.)
12	Plaintiff's depo. 544:15-20; 545:1-25; 546:1-25; 547:1-2; 548:2-25; 549:1-7; 549:14-22	
13		
14	74. Hernandez requested ticket changes for Thella Bowens over five times. He did no less than five different itinerary changes, plus date changes and time changes. The airlines' charges for itinerary and date changes range between \$50 to \$100 per boarding document. Thella Bowens was not charged by the airlines for the changes. Thella could have changed her tickets by simply calling reservations.	Objection. Irrelevant; hearsay; improper opinion; lacks foundation and personal knowledge. (Evid. Code §§ 350, 403, 702 and 1200.)
15		Hernandez testified that Bowens never directly asked him for an upgrade or flight change. (Hernandez Depo. 549:8-10 [Exh. 2].) This statement also lacks foundation as to how much and whether an airline charges for changes and upgrades.
16	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-22; 554:1-10	
17		
18		
19		
20	75. Ted Sexton instructed Hernandez that he should get Thella access to premier airline lounges so she wouldn't have to wait in the public waiting rooms. Sexton requested that even for the briefest moments if the plane was late to have Thella sit in the lounge.	Objection. Irrelevant and hearsay. (Evid. Code §§ 350 and 1200.)
21	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-7	
22		
23		
24		
25	76. Ted Sexton asked if special privileges could be obtained for Thella Bowens' sister.	Objection. Vague; hearsay. (Evid. Code § 1200.)
26	Plaintiff's depo. 561:1-25	
27		
28	77. Authority board member Morris Vance	Objection. Lacks foundation and hearsay.

1 requested and received at least two upgrades  
2 to first class and there were no charges. He  
3 requested several other first-class upgrades  
and paid no charges for upgrades or flight  
changes.

(Evid. Code §§ 403, 702 and 1200.)

4 Plaintiff's depo. 595:25; 596:10-12; 599:1-6;  
599:25; 600:3

6 78. Authority Vice-President Vernon Evans  
repeatedly requested changes in flight  
7 schedules no less than 15-20 times in the last  
two years. Ted Sexton told Hernandez to "do  
8 whatever you can." Sexton knew the changes  
were at no cost. Hernandez asked Sexton if it  
was okay to change Evans' tickets at the time.

Objection. Hearsay and lacks foundation.  
(Evid. Code §§ 403 and 1200.)

9 Plaintiff's depo. 604:5-11; 604:12-25; 605:18-  
10 23; 607:8-12; 608:6-10; 609:8-18; 610:1-13;  
612:17-21

11 79. Thella Bowens requested two free airline  
12 tickets from Hawaiian Airlines and from  
Southwest Airlines because she was on the  
13 board of United Way. The tickets were all  
donated to the Authority.

Objection. Lacks foundation and personal  
knowledge; hearsay. (Evid. Code §§ 403, 702  
and 1200.) Hernandez testified that Bowens  
never asked him directly for any airline  
benefits. (Hernandez Depo. 549:8-10 [Exh.  
2].)

14 Plaintiff's depo. 619:12-17; 619:22-23;  
15 620:19-21; 621:9-11

16 80. There was a power struggle between  
17 Bryan Enarson and Ted Sexton. Enarson had  
more control and had one ear of Thella  
Bowens'.

Objection. Lacks foundation and personal  
knowledge. (Evid. Code §§ 403 and 702.)

18 Plaintiff's depo. 645:19-25; 646:1-2

19 81. Authority Vice-President Bryan Enarson  
20 requested free tickets, upgrades and special  
privileges from Hawaiian Airlines.

Objection. Hearsay; lacks foundation. (Evid.  
Code §§ 403, 702 and 1200.) Hernandez' only  
knowledge of Enarson's alleged tickets and  
upgrades comes from other people.  
(Hernandez Depo. 687:4-15 [Exh. 2].) Further,  
this fact is irrelevant because it does not state  
that Enarson actually received any of the  
alleged requested items.

21 Plaintiff's depo. 687:4-15

24  
25 **Adjudication No. 1: Hernandez' First Cause of Action fails as a matter of law because the**  
26 **Authority's Codes are not a Federal or State law, rule or regulation.**

27 **Plaintiff's Additional Undisputed Facts and**

**Authority's Response and Supporting**

Supporting Evidence	Evidence
<p>5. One of Hernandez' duties was the evaluation of a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking, and revenues which would generate to the lease holder for 2100 stalls.</p> <p>Decl. J. Hernandez ¶ 2, Plaintiff's depo. 387:11-21, 389:15-17, 396:1-8</p>	Not disputed for purposes of this motion only.
<p>6. Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation.</p> <p>Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11</p>	Not disputed for purposes of this motion only.
<p>7. Hernandez conducted an evaluation of the cash flow of the property when the lease came up for renegotiation, and determined that deficiencies in the property prevented from generating sufficient revenue to cover the lease price by at least \$2 million per year. The deficiency center on the discovery of toxic waste in the soil beneath the property which severely limited the development of the property for parking.</p> <p>Decl. J. Hernandez ¶ 2; Plaintiff's depo. 397:3-7</p>	Objection. Improper opinion (Evid. Code § 800); lacks foundation (Evid. Code § 403).
<p>10. Another of Hernandez' duties was the evaluation of a lease from the Port of property located at the west side of the Airport. (The Teledyne Ryan property) The lease of that property likewise contemplated the generation of revenues to cover the lease through its use as a parking lot. The lease had been negotiated by Enarson and was not subject to renegotiation.</p> <p>Decl. J. Hernandez ¶ 4; Plaintiff's depo. 388:8-12</p>	Not disputed for purposes of this motion only.
<p>11. Hernandez discovered this property was likewise contaminated and only a small portion of it was usable.</p> <p>Decl. J. Hernandez ¶ 4; Plaintiff's depo. 389:19-22, 390:3-5, 396:20-25</p>	Not disputed for purposes of this motion only.



1 2 3 4 5	12. The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million.  Decl. J. Hernandez ¶ 4; Plaintiff's depo. 407:2-408:2, 409:3-6	Objection. Lacks foundation (Evid. Code § 403); improper opinion (Evid. Code § 800).
6 7 8 9 10 11 12	14. Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the state requirements that they be accessible by wheel chair, as required by the Americans with Disabilities Act (ADA).  Decl. J. Hernandez ¶5; Plaintiff's depo. 349:23-350:5, 352:3-353:8, 336:20-21, 337:17-19	Not disputed for purposes of this motion only.
13 14 15 16 17 18	15. He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so by Enarson because Enarson had made handshake agreements with the concessionaires.  Decl. J. Hernandez ¶ 5; Plaintiff's depo. 333:10-17, 335:4-8, 339:6-8, 336:20-21, 343:20-25	Objection. Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Improper Legal Conclusion. (Evid. Code § 800); Hearsay. (Evid. Code § 1200.) Vague as to "he".
19 20 21 22 23	17. Another of Hernandez' duties was to help negotiate and monitor contracts for the management of parking services. The low bidder (based on "projected" reimbursable expenses) on a contract to manage the Airport's parking lots was Lindbergh Parking Incorporated (LPI).  Decl. J. Hernandez ¶ 6	Not disputed for purposes of this motion only.
24 25 26 27 28	18. Its bid was so low that Hernandez – who had managed parking himself – suspected the bid was insincere. He thereafter closely monitored the performance of the contract and noted LPI was overcharging the Authority approximately \$1 million to 1.5 million per year. This estimate was based, among other things, on the fact that LPI (1) did not lease new shuttle transportation vehicles as stated in	Not disputed for purposes of this motion only.

its bid (but instead used older shuttles owned by LPI); (2) was seeking reimbursement for an unnecessary management position (owner/manager being paid for management work he did not perform); and (3) double-billing the Authority for workers' compensation insurance.

Decl. J. Hernandez ¶ 6; Plaintiff's Depo. 478:16-22; 481:1-4; 483:2-6

20. The negotiating agent on behalf of LPI – Elizabeth Stump-Moore – was, however, a friend of Bowens'.

Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 488:25; 489:19-25; 490:10-15

Not disputed for purposes of this motion.

**Adjudication No. 2: Hernandez' First Cause of Action fails as a matter of law because Hernandez could not have had a reasonable belief that he was disclosing activity made unlawful by a federal or state law, rule or regulation.**

**Plaintiff's Additional Undisputed Facts and Supporting Evidence**

**Authority's Response and Supporting Evidence**

5. One of Hernandez' duties was the evaluation of a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking, and revenues which would generate to the lease holder for 2100 stalls.

Decl. J. Hernandez ¶ 2, Plaintiff's depo. 387:11-21, 389:15-17, 396:1-8

Not disputed for purposes of this motion only.

6. Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation.

Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11

Not disputed for purposes of this motion only.

7. Hernandez conducted an evaluation of the cash flow of the property when the lease came up for renegotiation, and determined that deficiencies in the property prevented from generating sufficient revenue to cover the lease price by at least \$2 million per year. The

Objection. Improper opinion (Evid. Code § 800); lacks foundation (Evid. Code § 403).



1	deficiency center on the discovery of toxic waste in the soil beneath the property which severely limited the development of the property for parking.	
2		
3	Decl. J. Hernandez ¶ 2; Plaintiff's depo.	
4	397:3-7	
5	10. Another of Hernandez' duties was the evaluation of a lease from the Port of property located at the west side of the Airport. (The Teledyne Ryan property) The lease of that property likewise contemplated the generation of revenues to cover the lease through its use as a parking lot. The lease had been negotiated by Enarson and was not subject to renegotiation.	Not disputed for purposes of this motion only.
6		
7		
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9		
10	Decl. J. Hernandez ¶ 4; Plaintiff's depo.	
11	388:8-12	
12	11. Hernandez discovered this property was likewise contaminated and only a small portion of it was usable.	Not disputed for purposes of this motion only.
13		
14	Decl. J. Hernandez ¶ 4; Plaintiff's depo.	
15	389:19-22, 390:3-5, 396:20-25	
16	12. The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million.	Objection. Lacks foundation (Evid. Code § 403); improper opinion (Evid. Code § 800).
17		
18	Decl. J. Hernandez ¶ 4; Plaintiff's depo.	
19	407:2-408:2, 409:3-6	
20	14. Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the state requirements that they be accessible by wheel chair, as required by the Americans with Disabilities Act (ADA).	Not disputed for purposes of this motion only.
21		
22		
23		
24		
25	Decl. J. Hernandez ¶ 5; Plaintiff's depo.	
26	349:23-350:5, 352:3-353:8, 336:20-21, 337:17-19	
27	15. He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so	Objection. Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Improper Legal Conclusion. (Evid.
28		

1	by Enarson because Enarson had made handshake agreements with the concessionaires.	Code § 800); Hearsay. (Evid. Code § 1200.) Vague as to "he".
2		
3	Decl. J. Hernandez ¶ 5; Plaintiff's depo. 333:10-17, 335:4-8, 339:6-8, 336:20-21, 343:20-25	
4		
5	17. Another of Hernandez' duties was to help negotiate and monitor contracts for the management of parking services. The low bidder (based on "projected" reimbursable expenses) on a contract to manage the Airport's parking lots was Lindbergh Parking Incorporated (LPI).	Not disputed for purposes of this motion only.
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7		
8		
9	Decl. J. Hernandez ¶ 6	
10	18. Its bid was so low that Hernandez – who had managed parking himself – suspected the bid was insincere. He thereafter closely monitored the performance of the contract and noted LPI was overcharging the Authority approximately \$1 million to 1.5 million per year. This estimate was based, among other things, on the fact that LPI (1) did not lease new shuttle transportation vehicles as stated in its bid (but instead used older shuttles owned by LPI); (2) was seeking reimbursement for an unnecessary management position (owner/manager being paid for management work he did not perform); and (3) double-billing the Authority for workers' compensation insurance.	Not disputed for purposes of this motion only.
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19	Decl. J. Hernandez ¶ 6; Plaintiff's Depo. 478:16-22; 481:1-4; 483:2-6	
20	20. The negotiating agent on behalf of LPI – Elizabeth Stump-Moore – was, however, a friend of Bowens'.	Not disputed for purposes of this motion.
21		
22	Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 488:25; 489:19-25; 490:10-15	
23		

24 **Adjudication No. 3: Hernandez' First Cause of Action fails as a matter of law because there**  
 25 **is no causal connection between Hernandez' alleged protected activities and his termination**  
 26 **because the disclosures were too remote in time.**

27 **Plaintiff's Additional Undisputed Facts and Authority's Response and Supporting**  
 28

1	Supporting Evidence	Evidence
2 3 4	8. Hernandez communicated the deficiency in the property to Sexton and Bowens, and that the continuation of the lease at its existing rate would amount to a gift of public money to the Port.	Objection. It is improper to create a triable issue of fact by disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22 [where "there is a clear and unequivocal admission by the plaintiff ... in his deposition ... [the trial court is] forced to conclude there is no substantial evidence of the existence of a triable issue of fact [notwithstanding a contradictory declaration in opposition to summary judgment.]"
5 6	Decl. J. Hernandez ¶ 2; Plaintiff's depo. 393:6-24	
7 8 9 10 11 12 13 14 15 16 17 18 19 20		Hernandez admitted in his deposition that he only complained to Ted Sexton about the General Dynamics Lease. (Hernandez Depo. 394:10-16; 397:22-398:9; 522:25-523:5 [Exh. 2].) Hernandez further testified that although Thella Bowens had an open door policy, he would never go to her office and utilize the open door policy (Hernandez Depo. 644:3-8 [Exh. 2]), and that the only person he felt he could go to was Ted Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).
		Since Hernandez testified that he only told Sexton about the General Dynamics lease, he cannot create a triable issue of fact by now stating that he told Bowens as well.
		Further, Hernandez' statement is inadmissible hearsay to prove that the continuation of the lease would amount to a gift of public money.
		Further, although Hernandez does not state that the gift of funds was illegal, or that he believed the gift was illegal, to the extent that this statement is construed to be a legal conclusion, it is improper. (Evid. Code § 800.)
21 22 23	13. Hernandez then informed Sexton, Enarson and Bowens that the lease constituted an unwarranted expenditure of public money to the Port of over \$3 million per year.	Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Hearsay. (Evid. Code § 1200.) Improper Opinion. (Evid. Code § 800.)
24 25 26 27 28	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 417:14-22, 418:3-10	It is improper to create a triable issue of fact by disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22.
		Hernandez admitted in his deposition that he only complained to Ted Sexton and the Teledyne Task Force about the Teledyne Ryan lease. (Hernandez Depo. 410:3-413:18;

1		522:25-523:5 [Exh. 2].) Hernandez further testified that although Thella Bowens had an open door policy, he would never go to her office and utilize the open door policy (Hernandez Depo. 644:3-8 [Exh. 2]), and that the only person he felt he could go to was Ted Sexton (Hernandez Depo. 644:9-16 [Exh. 2]). Since Hernandez admitted that he only informed Sexton and the Teledyne Ryan Task Force about the Teledyne Ryan lease, he cannot now create a triable issue of fact by alleging in his declaration that he also told Bowens.
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7	16. He told Sexton, Enarson and Bowens that he did not believe Enarson had the authority to enter into such agreements with the concessionaires, and that Enarson's enforcement of the agreements constituted a gift to the concessionaires.	Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Hearsay. (Evid. Code § 1200.) Improper Opinion. (Evid. Code § 800).
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11	Decl. J. Hernandez ¶ 5; Plaintiff's depo. 335:17-18; 336:1; 354:6-9; 368:10-16; 377:1-4	This statement is hearsay if offered to prove that Hernandez did not believe that Enarson had the authority to enter into agreements. Further, Hernandez fails to lay foundation and state facts to show that he has personal knowledge of the alleged agreements.
12		
13		Further, although Hernandez does not state that the gift was illegal, or that he believed the gift was illegal, to the extent that this statement is construed to be a legal conclusion, it is improper. (Evid. Code § 800.)
14		
15		
16		Finally, it is improper to create a triable issue of fact by disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22.
17		
18		
19		Hernandez admitted in his deposition that he only complained to Ted Sexton and a handful of others regarding the restroom project. (Hernandez Depo. 354:6-8; 375:17-21; 522:4-523:5 [Exh. 2].) Hernandez further testified that although Thella Bowens had an open door policy, he would never go to her office and utilize the open door policy. (Hernandez Depo. 644:3-8.) Finally, Hernandez testified that the only person that he felt he could complain to was Ted. (Hernandez Depo. 644:9-16.)
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25		Since Hernandez admitted that he only informed Sexton, the terminal operations committee and the architect about the Restroom Project, he cannot now create a triable issue of fact by alleging in his declaration that he also told Bowens.
26		
27		
28	19. Hernandez reported these overcharges to	It is improper to create a triable issue of fact by

1	Sexton, Enarson and Bowens, in October 2005 and placed LPI on a 90-day timetable to explain and justify all the expenses. He informed Sexton, Enarson and Bowens that the LPI contract constituted an unwarranted expenditure of public money to LPI.	disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22.
2	Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 505:11-23; 506:10-23; 508:7-13; 511:16-23	Hernandez admitted in his deposition that he only complained to Ted Sexton and Andrew McIntyre regarding LPI. (Hernandez Depo. 493:24-494:8; 498:25-499:11; 501:3-8; 503:5-504:6; 522:4-24 [Exh. 2].) Hernandez further testified that although Thella Bowens had an open door policy, he would never go to her office and utilize the open door policy (Hernandez Depo. 644:3-8 [Exh. 2]), and that the only person he felt he could go to was Ted Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).
3		Since Hernandez admitted that he only informed Sexton and McIntyre about LPI, he cannot now create a triable issue of fact by alleging in his declaration that he also told Bowens.
4		Hernandez first made the disclosure regarding LPI's expenses in 2004. (Hernandez 493:24-495:15 [Hernandez made his first disclosure at the three-month or six-month submittal]; Sexton Dec. 3:15-17 [the LPI contract began in January 2004].)
5	20. The negotiating agent on behalf of LPI – Elizabeth Stump-Moore – was, however, a friend of Bowens'.	Not disputed for purposes of this motion.
6	Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 488:25; 489:19-25; 490:10-15	
7	21. On November 2, 2005, Bowens engaged a law firm to investigate Hernandez for "ethics" violations associated with the receipt of benefits from the Authority's vendors. This was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations.	Objection. The second sentence lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
8	Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3	Hernandez' declaration does not state that this was the first time the Authority retained a law firm to investigate ethics violations. Rather, Hernandez states in his declaration that this was the first time <i>that he was aware of</i> that anyone was questioned regarding receipt of tickets.
9	22. The law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline tickets to Hawaii; and (3) charger football tickets, the value of which placed Hernandez in violation of the Ethics Code applicable to Authority employees.	Objection to the extent that this is a partial and incomplete summary of the findings in the report.



1	Decl. P. Swan	
2	23. Bowens claims to have terminated Hernandez' employment based on the	Not disputed for purposes of this motion.
3	conclusions in the report.	
4	Decl. T. Bowens ¶ 9	
5	24. With regard to the "free rounds of golf,"	Objection. Irrelevant. (Evid. Code § 350.)
6	Hernandez cleared the trip with his boss,	
7	Sexton, before going, after disclosing the	
8	nature of the outing and that the golf rounds	
9	were supplied by Mike Parrish.	
10	Decl. J. Hernandez ¶ 9; Plaintiff's depo.	
11	158:18-22; 168:5-24	
12	25. In the process, Sexton admitted he had	Objection. Hearsay. (Evid. Code § 1200.)
13	attended the same golf outing under similar	
14	circumstances.	
15	Decl. J. Hernandez ¶ 9	
16	26. Hernandez compensated Parrish for the	Objection. Lacks foundation; irrelevant. (Evid. Code §§ 350 and 403.)
17	round by buying Parrish's lunch and dinner	
18	and by making gift contributions for the raffle.	
19	The net personal value to Hernandez was	The declaration of Pat Swan does not establish the alleged fact presented.
20	negative by over \$200.	
21	Decl. J. Hernandez ¶ 9; Decl. P. Swan;	
22	Plaintiff's depo. 159:14-19; 163:3-13; 164:10-	
23	14	
24	27. Hernandez had a strong social relationship	Not disputed for purposes of this motion.
25	with Parrish, which included joint family	
26	outings and gatherings, dinners, barbecues and	
27	sporting events.	
28	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl.	
	M. Parrish ¶ 2	
	28. With regard to the Hawaii ticket, ticketing	Objection. Lacks foundation and is vague as to who in "management" regarded ticketing benefits as a normal benefit of the workplace. (Evid. Code § 403.) Further, none of the cited evidence states that ticketing benefits were a normal benefit of the workplace, or that Hernandez discussed whether the practice was ethically acceptable.
	benefits were regarded by management as	
	normal benefit of their workplace, and that	
	Sexton assigned Hernandez responsibility on	Hearsay. (Evid. Code § 1200.)
	frequent occasions to obtain ticket upgrades	
	for various employees and board members.	
	Hernandez specifically discussed whether the	
	practice was ethically acceptable and Sexton	
	replied it was.	
	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
	Plaintiff's depo. 240:1-25; 602:20-25; 609:1-	
	611:25	



1 2 3 4 5 6 7	29. Notwithstanding the practice among Hernandez' superiors to receive passes and upgrades, Hernandez' receipt of those benefits was limited to gifts from personal friends. The tickets on Southwest came from Parrish. The tickets on Hawaiian Air came from Janet Nix, another personal friend, who told him she gave tickets like those to all kinds of friends having nothing to do with business.  Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶ 3	Objection. Improper argument and opinion; lacks foundation. (Evid. Code §§ 403 and 800.) Further, although Hernandez may have received benefits from friends, those friends were also employees of the Authority's vendors. (Hernandez Depo. 191:8-20; 198:8-200:17; 280:1-14; and 281:6-12 [Exh. 1].)
8 9 10 11 12	30. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed.  Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ; Plaintiff's Depo. 280:15-20, 23-25; 281:1-2; Decl. M. Parrish par. 3	Objection. Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.)
13 14 15 16 17	31. With regard to the football tickets, ACE parking did not have a contractor or vendor agreement of any sort with the Authority.  Decl. J. Hernandez ¶ 12; Decl. P. Swan; Plaintiff's Depo. 268:1-4; 272:5-9	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
18 19 20 21 22	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends from Hernandez' prior employment relationship with ACE Parking.  Decl. J. Hernandez ¶ 12; Decl. P. Swan	Not disputed for purposes of this motion only.
23 24 25	33. During Swan's interviews with Hernandez, he expressed no interest in the fact that Parrish and Hernandez were close personal friends.  Decl. J. Hernandez ¶ 13	Objection. Hearsay. (Evid. Code § 1200.)
26 27 28	34. He avoided discussion of the tendency of other employees such as Bowens and Sexton to make active and aggressive use of their positions to acquire ticketing upgrades and	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)  Lacks foundation. (Evid. Code § 403.)

1	benefits worth thousands of dollars.	Hernandez has not established that employees
2	Decl. J. Hernandez ¶ 13	"made active and aggressive use of their
3		positions to acquire ticketing upgrades and
4	35. When Hernandez attempted to explain	benefits worth thousands of dollars."
5	these friendships and practices, Swan cut him	
6	off and would state that he was not interested	Objection. Hearsay. (Evid. Code § 1200.)
7	in the nature of those friendships and what the	
8	office practice was.	
9	Decl. J. Hernandez ¶ 13	
10	36. Hernandez had previously received	Not disputed for purposes of this motion only.
11	outstanding performance evaluations.	
12	Decl. J. Hernandez ¶ 14; Plaintiff's Depo.	
13	786:9-18	
14	37. The Authority did, in fact, have a	This "fact" is contrary to Hernandez' own
15	progressive disciplinary policy set forth in	testimony and thus cannot create a triable issue
16	writing, which emphasizes the Authority's	of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-
17	commitment to preserve employment through	22.) Hernandez admitted in his deposition that
18	pre-termination warnings and training.	he was an at-will employee and that he could
19	Decl. J. Hernandez ¶ 14; Plaintiff's Depo.	be terminated at any time, with or without
20	317:14-16	cause. (Hernandez Depo. 115:21-116:6; Exh.
21		16.) If he could be terminated at any time, then
22		the Authority was under no obligation to
23		progressively discipline Hernandez. Further,
24		this fact lacks foundation because the cited
25		testimony does not establish that the alleged
26		policy is in writing.
27	38. That the Authority failed to adhere to this	Objection. Lacks foundation.
28	policy and instead routed the matter to an	
	expensive and contentious law firm is a truly	
	extraordinary decision.	
	Decl. J. Hernandez ¶ 14	
	39. Ace Parking did not have a direct service	Objection. Lacks foundation. Hernandez knew
	agreement with the Airport Authority. Ace	that Ace Parking tried to obtain a business
	did not have any sort of a business	relationship with the Authority in January
	relationship with the Airport Authority.	2005. (Hernandez Depo. 151:4-18 [Exh. 1].)
	Plaintiff's depo. 149:15-20; 150:20-25	Even prior to that, Lindbergh Parking, Inc.
		("LPi") was a vendor doing business with the
		Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the
		owner of Ace Parking, is a 40% owner of LPi.
		( <i>Id.</i> at 75:18-19, 127:10-128:2.)
	41. Ted Sexton told Hernandez it would be	Objection. Lacks foundation. (Evid. Code §
	okay to go to the Southwest Airline Golf	403.) Hearsay. (Evid. Code § 1200.)
	Tournaments. Sexton knew he was a guest of	
	Southwest's.	

1	Plaintiff's depo. 158:18-22; 168:5-8, 12-13, 18, 21-24	
2	42. Hernandez had absolutely never received free food from the concessions in the Airport terminals.	Not disputed for purposes of this motion only.
3	Plaintiff's depo. 201:16-18	
4	44. Ted Sexton told Hernandez to write everything on the form, whether he thought it proper to do so or not.	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
5	Plaintiff's depo. 293:14-20	
6	74. Hernandez requested ticket changes for Thella Bowens over five times. He did no less than five different itinerary changes, plus date changes and time changes. The airlines' charges for itinerary and date changes range between \$50 to \$100 per boarding document. Thella Bowens was not charged by the airlines for the changes. Thella could have changed her tickets by simply calling reservations.	Objection. Irrelevant; hearsay; improper opinion; lacks foundation and personal knowledge. (Evid. Code §§ 350, 403, 702 and 1200.)
7	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-22; 554:1-10	Hernandez testified that Bowens never directly asked him for an upgrade or flight change. (Hernandez Depo. 549:8-10 [Exh. 2].) This statement also lacks foundation as to how much and whether an airline charges for changes and upgrades.
8	75. Ted Sexton instructed Hernandez that he should get Thella access to premier airline lounges so she wouldn't have to wait in the public waiting rooms. Sexton requested that even for the briefest moments if the plane was late to have Thella sit in the lounge.	Objection. Irrelevant and hearsay. (Evid. Code §§ 350 and 1200.)
9	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-7	
10	76. Ted Sexton asked if special privileges could be obtained for Thella Bowens' sister.	Objection. Vague; hearsay. (Evid. Code § 1200.)
11	Plaintiff's depo. 561:1-25	
12	77. Authority board member Morris Vance requested and received at least two upgrades to first class and there were no charges. He requested several other first-class upgrades and paid no charges for upgrades or flight changes.	Objection. Lacks foundation and hearsay. (Evid. Code §§ 403, 702 and 1200.)
13	Plaintiff's depo. 595:25; 596:10-12; 599:1-6; 599:25; 600:3	
14	78. Authority Vice-President Vernon Evans repeatedly requested changes in flight	Objection. Hearsay and lacks foundation.

schedules no less than 15-20 times in the last two years. Ted Sexton told Hernandez to "do whatever you can." Sexton knew the changes were at no cost. Hernandez asked Sexton if it was okay to change Evans' tickets at the time.

(Evid. Code §§ 403 and 1200.)

Plaintiff's depo. 604:5-11; 604:12-25; 605:18-23; 607:8-12; 608:6-10; 609:8-18; 610:1-13; 612:17-21

79. Thella Bowens requested two free airline tickets from Hawaiian Airlines and from Southwest Airlines because she was on the board of United Way. The tickets were all donated to the Authority.

Objection. Lacks foundation and personal knowledge; hearsay. (Evid. Code §§ 403, 702 and 1200.) Hernandez testified that Bowens never asked him directly for any airline benefits. (Hernandez Depo. 549:8-10 [Exh. 2].)

Plaintiff's depo. 619:12-17; 619:22-23; 620:19-21; 621:9-11

80. There was a power struggle between Bryan Enarson and Ted Sexton. Enarson had more control and had one ear of Thella Bowens'.

Objection. Lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)

Plaintiff's depo. 645:19-25; 646:1-2

81. Authority Vice-President Bryan Enarson requested free tickets, upgrades and special privileges from Hawaiian Airlines.

Objection. Hearsay; lacks foundation. (Evid. Code §§ 403, 702 and 1200.) Hernandez' only knowledge of Enarson's alleged tickets and upgrades comes from other people. (Hernandez Depo. 687:4-15 [Exh. 2].) Further, this fact is irrelevant because it does not state that Enarson actually received any of the alleged requested items.

Plaintiff's depo. 687:4-15

**Adjudication No. 4: Hernandez' First Cause of Action fails as a matter of law because there is no causal connection between Hernandez' alleged protected activities and his termination because the decisionmaker was not aware of the protected activities.**

**Plaintiff's Additional Undisputed Facts and Supporting Evidence**

**Authority's Response and Supporting Evidence**

8. Hernandez communicated the deficiency in the property to Sexton and Bowens, and that the continuation of the lease at its existing rate would amount to a gift of public money to the Port.

Objection. It is improper to create a triable issue of fact by disputing prior testimony. *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22 [where "there is a clear and unequivocal admission by the plaintiff ... in his deposition ... [the trial court is] forced to conclude there is no substantial evidence of the existence of a triable issue of fact [notwithstanding a contradictory

Decl. J. Hernandez ¶ 2; Plaintiff's depo. 393:6-24

OPPOSITION TO PLAINTIFF'S SEPARATE  
STATEMENT OF ADDITIONAL UNDISPUTED  
MATERIAL FACTS RE MSJ

1		declaration in opposition to summary judgment.]”
2		
3		Hernandez admitted in his deposition that he
4		only complained to Ted Sexton about the
5		General Dynamics Lease. (Hernandez Depo.
6		394:10-16; 397:22-398:9; 522:25-523:5 [Exh.
7		2].) Hernandez further testified that although
8		Thella Bowens had an open door policy, he
9		would never go to her office and utilize the
10		open door policy (Hernandez Depo. 644:3-8
11		[Exh. 2]), and that the only person he felt he
12		could go to was Ted Sexton (Hernandez Depo.
13		644:9-16 [Exh. 2]).
14		
15		Since Hernandez testified that he only told
16		Sexton about the General Dynamics lease, he
17		cannot create a triable issue of fact by now
18		stating that he told Bowens as well.
19		
20		Further, Hernandez’ statement is inadmissible
21		hearsay to prove that the continuation of the
22		lease would amount to a gift of public money.
23		
24		Further, although Hernandez does not state that
25		the gift of funds was illegal, or that he believed
26		the gift was illegal, to the extent that this
27		statement is construed to be a legal conclusion,
28		it is improper. (Evid. Code § 800.)
13.	Hernandez then informed Sexton, Enarson	Lacks Foundation. (Evid. Code § 403.) Lacks
	and Bowens that the lease constituted an	Personal Knowledge. (Evid. Code § 702.)
	unwarranted expenditure of public money to	Hearsay. (Evid. Code § 1200.) Improper
	the Port of over \$3 million per year.	Opinion. (Evid. Code § 800.)
	Decl. J. Hernandez ¶ 4; Plaintiff’s depo.	It is improper to create a triable issue of fact by
	417:14-22, 418:3-10	disputing prior testimony. <i>D’Amico v. Board</i>
		<i>of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-
		22.
		Hernandez admitted in his deposition that he
		only complained to Ted Sexton and the
		Teledyne Task Force about the Teledyne Ryan
		lease. (Hernandez Depo. 410:3-413:18;
		522:25-523:5 [Exh. 2].) Hernandez further
		testified that although Thella Bowens had an
		open door policy, he would never go to her
		office and utilize the open door policy
		(Hernandez Depo. 644:3-8 [Exh. 2]), and that
		the only person he felt he could go to was Ted
		Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).
		Since Hernandez admitted that he only
		informed Sexton and the Teledyne Ryan Task
		Force about the Teledyne Ryan lease, he cannot
		now create a triable issue of fact by alleging in



1		his declaration that he also told Bowens.
2	16. He told Sexton, Enarson and Bowens that	Lacks Foundation. (Evid. Code § 403.) Lacks
3	he did not believe Enarson had the authority to	Personal Knowledge. (Evid. Code § 702.)
4	enter into such agreements with the	Hearsay. (Evid. Code § 1200.) Improper
5	concessionaires, and that Enarson's	Opinion. (Evid. Code § 800).
6	enforcement of the agreements constituted a	This statement is hearsay if offered to prove
7	gift to the concessionaires.	that Hernandez did not believe that Enarson
8		had the authority to enter into agreements.
9	Decl. J. Hernandez ¶ 5; Plaintiff's depo.	Further, Hernandez fails to lay foundation and
10	335:17-18; 336:1; 354:6-9; 368:10-16; 377:1-	state facts to show that he has personal
11	4	knowledge of the alleged agreements.
12		Further, although Hernandez does not state that
13		the gift was illegal, or that he believed the gift
14		was illegal, to the extent that this statement is
15		construed to be a legal conclusion, it is
16		improper. (Evid. Code § 800.)
17		Finally, it is improper to create a triable issue
18		of fact by disputing prior testimony. <i>D'Amico</i>
19		<i>v. Board of Medical Examiners</i> (1974) 11
20		Cal.3d 1, 21-22.
21		Hernandez admitted in his deposition that he
22		only complained to Ted Sexton and a handful
23		of others regarding the restroom project.
24		(Hernandez Depo. 354:6-8; 375:17-21; 522:25-
25		523:5 [Exh. 2].) Hernandez further testified
26		that although Thella Bowens had an open door
27		policy, he would never go to her office and
28		utilize the open door policy. (Hernandez Depo.
		644:3-8.) Finally, Hernandez testified that the
		only person that he felt he could complain to
		was Ted. (Hernandez Depo. 644:9-16.)
		Since Hernandez admitted that he only
		informed Sexton, the terminal operations
		committee and the architect about the
		Restroom Project, he cannot now create a
		triable issue of fact by alleging in his
		declaration that he also told Bowens.
	19. Hernandez reported these overcharges to	It is improper to create a triable issue of fact by
	Sexton, Enarson and Bowens, in October	disputing prior testimony. <i>D'Amico v. Board</i>
	2005 and placed LPI on a 90-day timetable to	<i>of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-
	explain and justify all the expenses. He	22.
	informed Sexton, Enarson and Bowens that	Hernandez admitted in his deposition that he
	the LPI contract constituted an unwarranted	only complained to Ted Sexton and Andrew
	expenditure of public money to LPI.	McIntyre regarding LPI. (Hernandez Depo.
		493:24-494:8; 498:25-499:11; 501:3-8; 503:5-
	Decl. J. Hernandez ¶ 7; Plaintiff's Depo.	504:6; 522:4-24 [Exh. 2].) Hernandez further
	505:11-23; 506:10-23; 508:7-13; 511:16-23	testified that although Thella Bowens had an
		open door policy, he would never go to her
		office and utilize the open door policy



1		(Hernandez Depo. 644:3-8 [Exh. 2]), and that
2		the only person he felt he could go to was Ted
3		Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).
4		Since Hernandez admitted that he only
5		informed Sexton and McIntyre about LPI, he
6		cannot now create a triable issue of fact by
7		alleging in his declaration that he also told
8		Bowens.
9		Hernandez first made the disclosure regarding
10		LPI's expenses in 2004. (Hernandez 493:24-
11		495:15 [Hernandez made his first disclosure at
12		the three-month or six-month submittal];
13		Sexton Dec. 3:15-17 [the LPI contract began in
14		January 2004].)

10 **Adjudication No. 5: Hernandez' First Cause of Action fails as a matter of law because the**  
 11 **Authority had a legitimate non retaliatory business reason for terminating Hernandez'**  
 12 **employment.**

13	Plaintiff's Additional Undisputed Facts and	Authority's Response and Supporting
14	Supporting Evidence	Evidence
15	24. With regard to the "free rounds of golf,"	Objection. Irrelevant. (Evid. Code § 350.)
16	Hernandez cleared the trip with his boss,	
17	Sexton, before going, after disclosing the	
18	nature of the outing and that the golf rounds	
19	were supplied by Mike Parrish.	
20	Decl. J. Hernandez ¶ 9; Plaintiff's depo.	
21	158:18-22; 168:5-24	
22	25. In the process, Sexton admitted he had	Objection. Hearsay. (Evid. Code § 1200.)
23	attended the same golf outing under similar	
24	circumstances.	
25	Decl. J. Hernandez ¶ 9	
26	26. Hernandez compensated Parrish for the	Objection. Lacks foundation; irrelevant.
27	round by buying Parrish's lunch and dinner	(Evid. Code §§ 350 and 403.)
28	and by making gift contributions for the raffle.	
	The net personal value to Hernandez was	The declaration of Pat Swan does not establish
	negative by over \$200.	the alleged fact presented.
	Decl. J. Hernandez ¶ 9; Decl. P. Swan;	
	Plaintiff's depo. 159:14-19; 163:3-13; 164:10-	
	14	
	27. Hernandez had a strong social relationship	Not disputed for purposes of this motion.
	with Parrish, which included joint family	

1	outings and gatherings, dinners, barbecues and sporting events.	
2	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl.	
3	M. Parrish ¶ 2	
4	28. With regard to the Hawaii ticket, ticketing	Objection. Lacks foundation and is vague as to
5	benefits were regarded by management as	who in "management" regarded ticketing
6	normal benefit of their workplace, and that	benefits as a normal benefit of the workplace.
7	Sexton assigned Hernandez responsibility on	(Evid. Code § 403.) Further, none of the cited
8	frequent occasions to obtain ticket upgrades	evidence states that ticketing benefits were a
9	for various employees and board members.	normal benefit of the workplace, or that
10	Hernandez specifically discussed whether the	Hernandez discussed whether the practice was
11	practice was ethically acceptable and Sexton	ethically acceptable.
12	replied it was.	Hearsay. (Evid. Code § 1200.)
13	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
14	Plaintiff's depo. 240:1-25; 602:20-25; 609:1-	
15	611:25	
16	29. Notwithstanding the practice among	Objection. Improper argument and opinion;
17	Hernandez' superiors to receive passes and	lacks foundation. (Evid. Code §§ 403 and
18	upgrades, Hernandez' receipt of those benefits	800.) Further, although Hernandez may have
19	was limited to gifts from personal friends.	received benefits from friends, those friends
20	The tickets on Southwest came from Parrish.	were also employees of the Authority's
21	The tickets on Hawaiian Air came from Janet	vendors. (Hernandez Depo. 191:8-20; 198:8-
22	Nix, another personal friend, who told him she	200:17; 280:1-14; and 281:6-12 [Exh. 1].)
23	gave tickets like those to all kinds of friends	
24	having nothing to do with business.	
25	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
26	Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶	
27	3	
28	30. Moreover, the Hawaiian tickets were listed	Objection. Hearsay. (Evid. Code § 1200.)
29	as "space available" and further identified as	Lacks foundation. (Evid. Code § 403.)
30	having "no dollar value" and could not be	
31	transferred or redeemed.	
32	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ;	
33	Plaintiff's Depo. 280:15-20, 23-25; 281:1-2;	
34	Decl. M. Parrish par. 3	
35	31. With regard to the football tickets, ACE	Objection. Lacks foundation. Hernandez knew
36	parking did not have a contractor or vendor	that Ace Parking tried to obtain a business
37	agreement of any sort with the Authority.	relationship with the Authority in January
38	Decl. J. Hernandez ¶ 12; Decl. P. Swan;	2005. (Hernandez Depo. 151:4-18 [Exh. 1].)
39	Plaintiff's Depo. 268:1-4; 272:5-9	Even prior to that, Lindbergh Parking, Inc.
40		("LPi") was a vendor doing business with the
41		Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the
42		owner of Ace Parking, is a 40% owner of LPi.
43		( <i>Id.</i> at 75:18-19, 127:10-128:2.)

1 2 3 4 5	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends from Hernandez' prior employment relationship with ACE Parking.  Decl. J. Hernandez ¶ 12; Decl. P. Swan	Not disputed for purposes of this motion only.
6 7 8	33. During Swan's interviews with Hernandez, he expressed no interest in the fact that Parrish and Hernandez were close personal friends.  Decl. J. Hernandez ¶ 13	Objection. Hearsay. (Evid. Code § 1200.)
9 10 11 12 13	34. He avoided discussion of the tendency of other employees such as Bowens and Sexton to make active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars.  Decl. J. Hernandez ¶ 13	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)  Lacks foundation. (Evid. Code § 403.) Hernandez has not established that employees "made active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars."
14 15 16 17	35. When Hernandez attempted to explain these friendships and practices, Swan cut him off and would state that he was not interested in the nature of those friendships and what the office practice was.  Decl. J. Hernandez ¶ 13	Objection. Hearsay. (Evid. Code § 1200.)
18 19 20	36. Hernandez had previously received outstanding performance evaluations.  Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 786:9-18	Not disputed for purposes of this motion only.
21 22 23 24 25 26 27	37. The Authority did, in fact, have a progressive disciplinary policy set forth in writing, which emphasizes the Authority's commitment to preserve employment through pre-termination warnings and training.  Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 317:14-16	This "fact" is contrary to Hernandez' own testimony and thus cannot create a triable issue of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-22.) Hernandez admitted in his deposition that he was an at-will employee and that he could be terminated at any time, with or without cause. (Hernandez Depo. 115:21-116:6; Exh. 16.) If he could be terminated at any time, then the Authority was under no obligation to progressively discipline Hernandez. Further, this fact lacks foundation because the cited testimony does not establish that the alleged policy is in writing.
28	38. That the Authority failed to adhere to this	Objection. Lacks foundation.

1	policy and instead routed the matter to an	
2	expensive and contentious law firm is a truly	
3	extraordinary decision.	
4	Decl. J. Hernandez ¶ 14	
5	39. Ace Parking did not have a direct service	Objection. Lacks foundation. Hernandez knew
6	agreement with the Airport Authority. Ace	that Ace Parking tried to obtain a business
7	did not have any sort of a business	relationship with the Authority in January
8	relationship with the Airport Authority.	2005. (Hernandez Depo. 151:4-18 [Exh. 1].)
9	Plaintiff's depo. 149:15-20; 150:20-25	Even prior to that, Lindbergh Parking, Inc.
10		("LPi") was a vendor doing business with the
11		Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the
12		owner of Ace Parking, is a 40% owner of LPi.
13		( <i>Id.</i> at 75:18-19, 127:10-128:2.)
14	41. Ted Sexton told Hernandez it would be	Objection. Lacks foundation. (Evid. Code §
15	okay to go to the Southwest Airline Golf	403.) Hearsay. (Evid. Code § 1200.)
16	Tournaments. Sexton knew he was a guest of	
17	Southwest's.	
18	Plaintiff's depo. 158:18-22; 168:5-8, 12-13,	
19	18, 21-24	
20	42. Hernandez had absolutely never received	Not disputed for purposes of this motion only.
21	free food from the concessions in the Airport	
22	terminals.	
23	Plaintiff's depo. 201:16-18	
24	44. Ted Sexton told Hernandez to write	Objection. Vague as to "he." Hearsay. (Evid.
25	everything on the form, whether he thought it	Code § 1200.)
26	proper to do so or not.	
27	Plaintiff's depo. 293:14-20	
28	74. Hernandez requested ticket changes for	Objection. Irrelevant; hearsay; improper
	Thella Bowens over five times. He did no	opinion; lacks foundation and personal
	less than five different itinerary changes, plus	knowledge. (Evid. Code §§ 350, 403, 702 and
	date changes and time changes. The airlines'	1200.)
	charges for itinerary and date changes range	Hernandez testified that Bowens never directly
	between \$50 to \$100 per boarding document.	asked him for an upgrade or flight change.
	Thella Bowens was not charged by the airlines	(Hernandez Depo. 549:8-10 [Exh. 2].) This
	for the changes. Thella could have changed	statement also lacks foundation as to how much
	her tickets by simply calling reservations.	and whether an airline charges for changes and
	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-	upgrades.
	22; 554:1-10	
	75. Ted Sexton instructed Hernandez that he	Objection. Irrelevant and hearsay. (Evid. Code
	should get Thella access to premier airline	§§ 350 and 1200.)
	lounges so she wouldn't have to wait in the	
	public waiting rooms. Sexton requested that	
	even for the briefest moments if the plane was	
	late to have Thella sit in the lounge.	

1	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-7	
2		
3	76. Ted Sexton asked if special privileges could be obtained for Thella Bowens' sister.	Objection. Vague; hearsay. (Evid. Code § 1200.)
4	Plaintiff's depo. 561:1-25	
5		
6	77. Authority board member Morris Vance requested and received at least two upgrades to first class and there were no charges. He requested several other first-class upgrades and paid no charges for upgrades or flight changes.	Objection. Lacks foundation and hearsay. (Evid. Code §§ 403, 702 and 1200.)
7		
8		
9	Plaintiff's depo. 595:25; 596:10-12; 599:1-6; 599:25; 600:3	
10		
11	78. Authority Vice-President Vernon Evans repeatedly requested changes in flight schedules no less than 15-20 times in the last two years. Ted Sexton told Hernandez to "do whatever you can." Sexton knew the changes were at no cost. Hernandez asked Sexton if it was okay to change Evans' tickets at the time.	Objection. Hearsay and lacks foundation. (Evid. Code §§ 403 and 1200.)
12		
13		
14	Plaintiff's depo. 604:5-11; 604:12-25; 605:18-23; 607:8-12; 608:6-10; 609:8-18; 610:1-13; 612:17-21	
15		
16		
17	79. Thella Bowens requested two free airline tickets from Hawaiian Airlines and from Southwest Airlines because she was on the board of United Way. The tickets were all donated to the Authority.	Objection. Lacks foundation and personal knowledge; hearsay. (Evid. Code §§ 403, 702 and 1200.) Hernandez testified that Bowens never asked him directly for any airline benefits. (Hernandez Depo. 549:8-10 [Exh. 2].)
18		
19	Plaintiff's depo. 619:12-17; 619:22-23; 620:19-21; 621:9-11	
20		
21	80. There was a power struggle between Bryan Enarson and Ted Sexton. Enarson had more control and had one ear of Thella Bowens'.	Objection. Lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
22		
23	Plaintiff's depo. 645:19-25; 646:1-2	
24		
25	81. Authority Vice-President Bryan Enarson requested free tickets, upgrades and special privileges from Hawaiian Airlines.	Objection. Hearsay; lacks foundation. (Evid. Code §§ 403, 702 and 1200.) Hernandez' only knowledge of Enarson's alleged tickets and upgrades comes from other people. (Hernandez Depo. 687:4-15 [Exh. 2].) Further, this fact is irrelevant because it does not state that Enarson actually received any of the
26		
27	Plaintiff's depo. 687:4-15	
28		



alleged requested items.

**Adjudication No. 6: Hernandez' First Cause of Action fails as a matter of law because he has no evidence of pretext.**

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>19. Hernandez reported these overcharges to Sexton, Enarson and Bowens, in October 2005 and placed LPI on a 90-day timetable to explain and justify all the expenses. He informed Sexton, Enarson and Bowens that the LPI contract constituted an unwarranted expenditure of public money to LPI.</p> <p>Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 505:11-23; 506:10-23; 508:7-13; 511:16-23</p>	<p>It is improper to create a triable issue of fact by disputing prior testimony. <i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1, 21-22.</p> <p>Hernandez admitted in his deposition that he only complained to Ted Sexton and Andrew McIntyre regarding LPI. (Hernandez Depo. 493:24-494:8; 498:25-499:11; 501:3-8; 503:5-504:6; 522:4-24 [Exh. 2].) Hernandez further testified that although Thella Bowens had an open door policy, he would never go to her office and utilize the open door policy (Hernandez Depo. 644:3-8 [Exh. 2]), and that the only person he felt he could go to was Ted Sexton (Hernandez Depo. 644:9-16 [Exh. 2]).</p> <p>Since Hernandez admitted that he only informed Sexton and McIntyre about LPI, he cannot now create a triable issue of fact by alleging in his declaration that he also told Bowens.</p> <p>Hernandez first made the disclosure regarding LPI's expenses in 2004. (Hernandez 493:24-495:15 [Hernandez made his first disclosure at the three-month or six-month submittal]; Sexton Dec. 3:15-17 [the LPI contract began in January 2004].)</p>
<p>20. The negotiating agent on behalf of LPI – Elizabeth Stump-Moore – was, however, a friend of Bowens'.</p> <p>Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 488:25; 489:19-25; 490:10-15</p>	<p>Not disputed for purposes of this motion.</p>
<p>21. On November 2, 2005, Bowens engaged a law firm to investigate Hernandez for "ethics" violations associated with the receipt of benefits from the Authority's vendors. This was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations.</p>	<p>Objection. The second sentence lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)</p> <p>Hernandez' declaration does not state that this was the first time the Authority retained a law firm to investigate ethics violations. Rather, Hernandez states in his declaration that this</p>



1	Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3	was the first time <i>that he was aware of</i> that anyone was questioned regarding receipt of tickets.
2		
3	22. The law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline tickets to Hawaii; and (3) charger football tickets, the value of which placed Hernandez in violation of the Ethics Code applicable to Authority employees.	Objection to the extent that this is a partial and incomplete summary of the findings in the report.
4		
5		
6	Decl. P. Swan	
7		
8	23. Bowens claims to have terminated Hernandez' employment based on the conclusions in the report.	Not disputed for purposes of this motion.
9		
10	Decl. T. Bowens ¶ 9	
11	24. With regard to the "free rounds of golf," Hernandez cleared the trip with his boss, Sexton, before going, after disclosing the nature of the outing and that the golf rounds were supplied by Mike Parrish.	Objection. Irrelevant. (Evid. Code § 350.)
12		
13		
14	Decl. J. Hernandez ¶ 9; Plaintiff's depo. 158:18-22; 168:5-24	
15		
16	25. In the process, Sexton admitted he had attended the same golf outing under similar circumstances.	Objection. Hearsay. (Evid. Code § 1200.)
17		
18	Decl. J. Hernandez ¶ 9	
19	26. Hernandez compensated Parrish for the round by buying Parrish's lunch and dinner and by making gift contributions for the raffle. The net personal value to Hernandez was negative by over \$200.	Objection. Lacks foundation; irrelevant. (Evid. Code §§ 350 and 403.)
20		The declaration of Pat Swan does not establish the alleged fact presented.
21		
22	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Plaintiff's depo. 159:14-19; 163:3-13; 164:10-14	
23		
24	27. Hernandez had a strong social relationship with Parrish, which included joint family outings and gatherings, dinners, barbecues and sporting events.	Not disputed for purposes of this motion.
25		
26	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl. M. Parrish ¶ 2	
27		
28	28. With regard to the Hawaii ticket, ticketing benefits were regarded by management as	Objection. Lacks foundation and is vague as to who in "management" regarded ticketing

1 2 3 4	normal benefit of their workplace, and that Sexton assigned Hernandez responsibility on frequent occasions to obtain ticket upgrades for various employees and board members. Hernandez specifically discussed whether the practice was ethically acceptable and Sexton replied it was.	benefits as a normal benefit of the workplace. (Evid. Code § 403.) Further, none of the cited evidence states that ticketing benefits were a normal benefit of the workplace, or that Hernandez discussed whether the practice was ethically acceptable.
5 6	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 240:1-25; 602:20-25; 609:1-611:25	Hearsay. (Evid. Code § 1200.)
7 8 9 10 11	29. Notwithstanding the practice among Hernandez' superiors to receive passes and upgrades, Hernandez' receipt of those benefits was limited to gifts from personal friends. The tickets on Southwest came from Parrish. The tickets on Hawaiian Air came from Janet Nix, another personal friend, who told him she gave tickets like those to all kinds of friends having nothing to do with business.	Objection. Improper argument and opinion; lacks foundation. (Evid. Code §§ 403 and 800.) Further, although Hernandez may have received benefits from friends, those friends were also employees of the Authority's vendors. (Hernandez Depo. 191:8-20; 198:8-200:17; 280:1-14; and 281:6-12 [Exh. 1].)
12 13	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶ 3	
14 15 16	30. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed.	Objection. Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.)
17 18	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's Depo. 280:15-20, 23-25; 281:1-2; Decl. M. Parrish par. 3	
19 20 21 22 23	31. With regard to the football tickets, ACE parking did not have a contractor or vendor agreement of any sort with the Authority.  Decl. J. Hernandez ¶ 12; Decl. P. Swan; Plaintiff's Depo. 268:1-4; 272:5-9	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
24 25 26 27 28	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends from Hernandez' prior employment relationship with ACE Parking.  Decl. J. Hernandez ¶ 12; Decl. P. Swan	Not disputed for purposes of this motion only.

1 2 3 4	33. During Swan's interviews with Hernandez, he expressed no interest in the fact that Parrish and Hernandez were close personal friends.  Decl. J. Hernandez ¶ 13	Objection. Hearsay. (Evid. Code § 1200.)
5 6 7 8	34. He avoided discussion of the tendency of other employees such as Bowens and Sexton to make active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars.  Decl. J. Hernandez ¶ 13	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)  Lacks foundation. (Evid. Code § 403.) Hernandez has not established that employees "made active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars."
9 10 11 12	35. When Hernandez attempted to explain these friendships and practices, Swan cut him off and would state that he was not interested in the nature of those friendships and what the office practice was.  Decl. J. Hernandez ¶ 13	Objection. Hearsay. (Evid. Code § 1200.)
13 14 15	36. Hernandez had previously received outstanding performance evaluations.  Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 786:9-18	Not disputed for purposes of this motion only.
16 17 18 19 20 21 22	37. The Authority did, in fact, have a progressive disciplinary policy set forth in writing, which emphasizes the Authority's commitment to preserve employment through pre-termination warnings and training.  Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 317:14-16	This "fact" is contrary to Hernandez' own testimony and thus cannot create a triable issue of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-22.) Hernandez admitted in his deposition that he was an at-will employee and that he could be terminated at any time, with or without cause. (Hernandez Depo. 115:21-116:6; Exh. 16.) If he could be terminated at any time, then the Authority was under no obligation to progressively discipline Hernandez. Further, this fact lacks foundation because the cited testimony does not establish that the alleged policy is in writing.
23 24 25 26	38. That the Authority failed to adhere to this policy and instead routed the matter to an expensive and contentious law firm is a truly extraordinary decision.  Decl. J. Hernandez ¶ 14	Objection. Lacks foundation.
27 28	39. Ace Parking did not have a direct service agreement with the Airport Authority. Ace did not have any sort of a business	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior

1	relationship with the Airport Authority.	to that, Lindbergh Parking, Inc. ("LPi") was a
2	Plaintiff's depo. 149:15-20; 150:20-25	vendor doing business with the Authority. ( <i>Id.</i> at
3		127:19-22.) Scott Jones, the owner of Ace Parking,
4	41. Ted Sexton told Hernandez it would be	is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-
5	okay to go to the Southwest Airline Golf	128:2.)
6	Tournaments. Sexton knew he was a guest of	
7	Southwest's.	Objection. Lacks foundation. (Evid. Code §
8	Plaintiff's depo. 158:18-22; 168:5-8, 12-13,	403.) Hearsay. (Evid. Code § 1200.)
9	18, 21-24	
10	42. Hernandez had absolutely never received	Not disputed for purposes of this motion only.
11	free food from the concessions in the Airport	
12	terminals.	
13	Plaintiff's depo. 201:16-18	
14	44. Ted Sexton told Hernandez to write	Objection. Vague as to "he." Hearsay. (Evid.
15	everything on the form, whether he thought it	Code § 1200.)
16	proper to do so or not.	
17	Plaintiff's depo. 293:14-20	
18	74. Hernandez requested ticket changes for	Objection. Irrelevant; hearsay; improper
19	Thella Bowens over five times. He did no	opinion; lacks foundation and personal
20	less than five different itinerary changes, plus	knowledge. (Evid. Code §§ 350, 403, 702 and
21	date changes and time changes. The airlines'	1200.)
22	charges for itinerary and date changes range	Hernandez testified that Bowens never directly
23	between \$50 to \$100 per boarding document.	asked him for an upgrade or flight change.
24	Thella Bowens was not charged by the airlines	(Hernandez Depo. 549:8-10 [Exh. 2].) This
25	for the changes. Thella could have changed	statement also lacks foundation as to how much
26	her tickets by simply calling reservations.	and whether an airline charges for changes and
27	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-	upgrades.
28	22; 554:1-10	
	75. Ted Sexton instructed Hernandez that he	Objection. Irrelevant and hearsay. (Evid. Code
	should get Thella access to premier airline	§§ 350 and 1200.)
	lounges so she wouldn't have to wait in the	
	public waiting rooms. Sexton requested that	
	even for the briefest moments if the plane was	
	late to have Thella sit in the lounge.	
	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-	
	7	
	76. Ted Sexton asked if special privileges	Objection. Vague; hearsay. (Evid. Code §
	could be obtained for Thella Bowens' sister.	1200.)
	Plaintiff's depo. 561:1-25	
	77. Authority board member Morris Vance	Objection. Lacks foundation and hearsay.

1	requested and received at least two upgrades to first class and there were no charges. He	(Evid. Code §§ 403, 702 and 1200.)
2	requested several other first-class upgrades	
3	and paid no charges for upgrades or flight changes.	
4	Plaintiff's depo. 595:25; 596:10-12; 599:1-6; 599:25; 600:3	
5	78. Authority Vice-President Vernon Evans repeatedly requested changes in flight	Objection. Hearsay and lacks foundation. (Evid. Code §§ 403 and 1200.)
6	schedules no less than 15-20 times in the last	
7	two years. Ted Sexton told Hernandez to "do whatever you can." Sexton knew the changes	
8	were at no cost. Hernandez asked Sexton if it was okay to change Evans' tickets at the time.	
9	Plaintiff's depo. 604:5-11; 604:12-25; 605:18-23; 607:8-12; 608:6-10; 609:8-18; 610:1-13; 612:17-21	
10	79. Thella Bowens requested two free airline tickets from Hawaiian Airlines and from Southwest Airlines because she was on the board of United Way. The tickets were all donated to the Authority.	Objection. Lacks foundation and personal knowledge; hearsay. (Evid. Code §§ 403, 702 and 1200.) Hernandez testified that Bowens never asked him directly for any airline benefits. (Hernandez Depo. 549:8-10 [Exh. 2].)
11	Plaintiff's depo. 619:12-17; 619:22-23; 620:19-21; 621:9-11	
12	80. There was a power struggle between Bryan Enarson and Ted Sexton. Enarson had more control and had one ear of Thella Bowens'.	Objection. Lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
13	Plaintiff's depo. 645:19-25; 646:1-2	
14	81. Authority Vice-President Bryan Enarson requested free tickets, upgrades and special privileges from Hawaiian Airlines.	Objection. Hearsay; lacks foundation. (Evid. Code §§ 403, 702 and 1200.) Hernandez' only knowledge of Enarson's alleged tickets and upgrades comes from other people. (Hernandez Depo. 687:4-15 [Exh. 2].) Further, this fact is irrelevant because it does not state that Enarson actually received any of the alleged requested items.
15	Plaintiff's depo. 687:4-15	
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#### GENERAL DYNAMICS DISCLOSURE:

Adjudication No. 12: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, fails



as a matter of law because Hernandez could not have had a reasonable belief that the General Dynamics' lease was unlawful.

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>5. One of Hernandez' duties was the evaluation of a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking, and revenues which would generate to the lease holder for 2100 stalls.</p> <p>Decl. J. Hernandez ¶ 2, Plaintiff's depo. 387:11-21, 389:15-17, 396:1-8</p>	Not disputed for purposes of this motion only.
<p>6. Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation.</p> <p>Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11</p>	Not disputed for purposes of this motion only.
<p>7. Hernandez conducted an evaluation of the cash flow of the property when the lease came up for renegotiation, and determined that deficiencies in the property prevented from generating sufficient revenue to cover the lease price by at least \$2 million per year. The deficiency center on the discovery of toxic waste in the soil beneath the property which severely limited the development of the property for parking.</p> <p>Decl. J. Hernandez ¶ 2; Plaintiff's depo. 397:3-7</p>	Objection. Improper opinion (Evid. Code § 800); lacks foundation (Evid. Code § 403).

Adjudication No. 13: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
5. One of Hernandez' duties was the	Not disputed for purposes of this motion only.



1 evaluation of a lease from the Port of property  
2 located on the north side of the Airport  
3 (General Dynamics property). The lease price  
4 contemplated the use of the property for  
5 parking, and revenues which would generate  
6 to the lease holder for 2100 stalls.

Decl. J. Hernandez ¶ 2, Plaintiff's depo.  
387:11-21, 389:15-17, 396:1-8

6. Hernandez' understanding of the lease was  
that the lease price was set by code for the  
years 2003, 2004 and 2005; and was thereafter  
subject to renegotiation.

Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-  
3); Plaintiff's depo. 396:1-8; 397:8-11

Not disputed for purposes of this motion only.

7. Hernandez conducted an evaluation of the  
cash flow of the property when the lease came  
up for renegotiation, and determined that  
deficiencies in the property prevented from  
generating sufficient revenue to cover the  
lease price by at least \$2 million per year. The  
deficiency center on the discovery of toxic  
waste in the soil beneath the property which  
severely limited the development of the  
property for parking.

Decl. J. Hernandez ¶ 2; Plaintiff's depo.  
397:3-7

Objection. Improper opinion (Evid. Code §  
800); lacks foundation (Evid. Code § 403).

**Adjudication No. 14: Hernandez' First Cause of Action fails as matter of law, insofar as it  
is based on any alleged disclosure regarding the General Dynamics' lease, because there is  
no causal connection between his alleged protected activity and his termination.**

**Plaintiff's Additional Undisputed Facts and  
Supporting Evidence**

**Authority's Response and Supporting  
Evidence**

5. One of Hernandez' duties was the  
evaluation of a lease from the Port of property  
located on the north side of the Airport  
(General Dynamics property). The lease price  
contemplated the use of the property for  
parking, and revenues which would generate  
to the lease holder for 2100 stalls.

Decl. J. Hernandez ¶ 2, Plaintiff's depo.  
387:11-21, 389:15-17, 396:1-8

Not disputed for purposes of this motion only.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>6. Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation.</p> <p>Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11</p> <p>7. Hernandez conducted an evaluation of the cash flow of the property when the lease came up for renegotiation, and determined that deficiencies in the property prevented from generating sufficient revenue to cover the lease price by at least \$2 million per year. The deficiency center on the discovery of toxic waste in the soil beneath the property which severely limited the development of the property for parking.</p> <p>Decl. J. Hernandez ¶ 2; Plaintiff's depo. 397:3-7</p> <p>21. On November 2, 2005, Bowens engaged a law firm to investigate Hernandez for "ethics" violations associated with the receipt of benefits from the Authority's vendors. This was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations.</p> <p>Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3</p> <p>22. The law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline tickets to Hawaii; and (3) charger football tickets, the value of which placed Hernandez in violation of the Ethics Code applicable to Authority employees.</p> <p>Decl. P. Swan</p> <p>23. Bowens claims to have terminated Hernandez' employment based on the conclusions in the report.</p> <p>Decl. T. Bowens ¶ 9</p> <p>24. With regard to the "free rounds of golf," Hernandez cleared the trip with his boss, Sexton, before going, after disclosing the nature of the outing and that the golf rounds</p>	<p>Not disputed for purposes of this motion only.</p> <p>Objection. Improper opinion (Evid. Code § 800); lacks foundation (Evid. Code § 403).</p> <p>Objection. The second sentence lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)</p> <p>Hernandez' declaration does not state that this was the first time the Authority retained a law firm to investigate ethics violations. Rather, Hernandez states in his declaration that this was the first time <i>that he was aware of</i> that anyone was questioned regarding receipt of tickets.</p> <p>Objection to the extent that this is a partial and incomplete summary of the findings in the report.</p> <p>Not disputed for purposes of this motion.</p> <p>Objection. Irrelevant. (Evid. Code § 350.)</p>
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1	were supplied by Mike Parrish.	
2	Decl. J. Hernandez ¶ 9; Plaintiff's depo. 158:18-22; 168:5-24	
3	25. In the process, Sexton admitted he had	Objection. Hearsay. (Evid. Code § 1200.)
4	attended the same golf outing under similar	
5	circumstances.	
6	Decl. J. Hernandez ¶ 9	
7	26. Hernandez compensated Parrish for the	Objection. Lacks foundation; irrelevant. (Evid. Code §§ 350 and 403.)
8	round by buying Parrish's lunch and dinner	
9	and by making gift contributions for the raffle.	The declaration of Pat Swan does not establish the alleged fact presented.
10	The net personal value to Hernandez was	
11	negative by over \$200.	
12	Decl. J. Hernandez ¶ 9; Decl. P. Swan;	
13	Plaintiff's depo. 159:14-19; 163:3-13; 164:10-14	
14	27. Hernandez had a strong social relationship	Not disputed for purposes of this motion.
15	with Parrish, which included joint family	
16	outings and gatherings, dinners, barbecues and	
17	sporting events.	
18	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl.	
19	M. Parrish ¶ 2	
20	28. With regard to the Hawaii ticket, ticketing	Objection. Lacks foundation and is vague as to who in "management" regarded ticketing
21	benefits were regarded by management as	benefits as a normal benefit of the workplace. (Evid. Code § 403.) Further, none of the cited
22	normal benefit of their workplace, and that	evidence states that ticketing benefits were a
23	Sexton assigned Hernandez responsibility on	normal benefit of the workplace, or that
24	frequent occasions to obtain ticket upgrades	Hernandez discussed whether the practice was
25	for various employees and board members.	ethically acceptable.
26	Hernandez specifically discussed whether the	
27	practice was ethically acceptable and Sexton	Hearsay. (Evid. Code § 1200.)
28	replied it was.	
29	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
30	Plaintiff's depo. 240:1-25; 602:20-25; 609:1-611:25	
31	29. Notwithstanding the practice among	Objection. Improper argument and opinion; lacks foundation. (Evid. Code §§ 403 and 800.) Further, although Hernandez may have
32	Hernandez' superiors to receive passes and	received benefits from friends, those friends
33	upgrades, Hernandez' receipt of those benefits	were also employees of the Authority's
34	was limited to gifts from personal friends.	vendors. (Hernandez Depo. 191:8-20; 198:8-200:17; 280:1-14; and 281:6-12 [Exh. 1].)
35	The tickets on Southwest came from Parrish.	
36	The tickets on Hawaiian Air came from Janet	
37	Nix, another personal friend, who told him she	
38	gave tickets like those to all kinds of friends	
39	having nothing to do with business.	
40	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
41	Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶	

1	3	
2	30. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed.	Objection. Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.)
3		
4	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ;	
5	Plaintiff's Depo. 280:15-20, 23-25; 281:1-2;	
6	Decl. M. Parrish par. 3	
7	31. With regard to the football tickets, ACE parking did not have a contractor or vendor agreement of any sort with the Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
8	Decl. J. Hernandez ¶ 12; Decl. P. Swan;	
9	Plaintiff's Depo. 268:1-4; 272:5-9	
10		
11	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends from Hernandez' prior employment relationship with ACE Parking.	Not disputed for purposes of this motion only.
12		
13		
14		
15	Decl. J. Hernandez ¶ 12; Decl. P. Swan	
16	33. During Swan's interviews with Hernandez, he expressed no interest in the fact that Parrish and Hernandez were close personal friends.	Objection. Hearsay. (Evid. Code § 1200.)
17		
18	Decl. J. Hernandez ¶ 13	
19		
20	34. He avoided discussion of the tendency of other employees such as Bowens and Sexton to make active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars.	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
21		Lacks foundation. (Evid. Code § 403.) Hernandez has not established that employees "made active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars."
22	Decl. J. Hernandez ¶ 13	
23		
24	35. When Hernandez attempted to explain these friendships and practices, Swan cut him off and would state that he was not interested in the nature of those friendships and what the office practice was.	Objection. Hearsay. (Evid. Code § 1200.)
25		
26		
27	Decl. J. Hernandez ¶ 13	
28		

1	36. Hernandez had previously received outstanding performance evaluations.	Not disputed for purposes of this motion only.
2		
3	Decl. J Hernandez ¶ 14; Plaintiff's Depo. 786:9-18	
4	37. The Authority did, in fact, have a progressive disciplinary policy set forth in writing, which emphasizes the Authority's commitment to preserve employment through pre-termination warnings and training.	This "fact" is contrary to Hernandez' own testimony and thus cannot create a triable issue of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-22.) Hernandez admitted in his deposition that he was an at-will employee and that he could be terminated at any time, with or without cause. (Hernandez Depo. 115:21-116:6; Exh. 16.) If he could be terminated at any time, then the Authority was under no obligation to progressively discipline Hernandez. Further, this fact lacks foundation because the cited testimony does not establish that the alleged policy is in writing.
5		
6	Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 317:14-16	
7		
8		
9		
10		
11	38. That the Authority failed to adhere to this policy and instead routed the matter to an expensive and contentious law firm is a truly extraordinary decision.	Objection. Lacks foundation.
12		
13		
14	Decl. J. Hernandez ¶ 14	
15	39. Ace Parking did not have a direct service agreement with the Airport Authority. Ace did not have any sort of a business relationship with the Airport Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
16		
17	Plaintiff's depo. 149:15-20; 150:20-25	
18		
19		
20	41. Ted Sexton told Hernandez it would be okay to go to the Southwest Airline Golf Tournaments. Sexton knew he was a guest of Southwest's.	Objection. Lacks foundation. (Evid. Code § 403.) Hearsay. (Evid. Code § 1200.)
21		
22	Plaintiff's depo. 158:18-22; 168:5-8, 12-13, 18, 21-24	
23		
24	42. Hernandez had absolutely never received free food from the concessions in the Airport terminals.	Not disputed for purposes of this motion only.
25		
26	Plaintiff's depo. 201:16-18	
27	44. Ted Sexton told Hernandez to write everything on the form, whether he thought it proper to do so or not.	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
28		



1	Plaintiff's depo. 293:14-20	
2	74. Hernandez requested ticket changes for	Objection. Irrelevant; hearsay; improper
3	Thella Bowens over five times. He did no	opinion; lacks foundation and personal
4	less than five different itinerary changes, plus	knowledge. (Evid. Code §§ 350, 403, 702 and
5	date changes and time changes. The airlines'	1200.)
6	charges for itinerary and date changes range	Hernandez testified that Bowens never directly
7	between \$50 to \$100 per boarding document.	asked him for an upgrade or flight change.
8	Thella Bowens was not charged by the airlines	(Hernandez Depo. 549:8-10 [Exh. 2].) This
9	for the changes. Thella could have changed	statement also lacks foundation as to how much
10	her tickets by simply calling reservations.	and whether an airline charges for changes and
11	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-	upgrades.
12	22; 554:1-10	
13	75. Ted Sexton instructed Hernandez that he	Objection. Irrelevant and hearsay. (Evid. Code
14	should get Thella access to premier airline	§§ 350 and 1200.)
15	lounges so she wouldn't have to wait in the	
16	public waiting rooms. Sexton requested that	
17	even for the briefest moments if the plane was	
18	late to have Thella sit in the lounge.	
19	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-	
20	7	
21	76. Ted Sexton asked if special privileges	Objection. Vague; hearsay. (Evid. Code §
22	could be obtained for Thella Bowens' sister.	1200.)
23	Plaintiff's depo. 561:1-25	
24	77. Authority board member Morris Vance	Objection. Lacks foundation and hearsay.
25	requested and received at least two upgrades	(Evid. Code §§ 403, 702 and 1200.)
26	to first class and there were no charges. He	
27	requested several other first-class upgrades	
28	and paid no charges for upgrades or flight	
29	changes.	
30	Plaintiff's depo. 595:25; 596:10-12; 599:1-6;	
31	599:25; 600:3	
32	78. Authority Vice-President Vernon Evans	Objection. Hearsay and lacks foundation.
33	repeatedly requested changes in flight	(Evid. Code §§ 403 and 1200.)
34	schedules no less than 15-20 times in the last	
35	two years. Ted Sexton told Hernandez to "do	
36	whatever you can." Sexton knew the changes	
37	were at no cost. Hernandez asked Sexton if it	
38	was okay to change Evans' tickets at the time.	
39	Plaintiff's depo. 604:5-11; 604:12-25; 605:18-	
40	23; 607:8-12; 608:6-10; 609:8-18; 610:1-13;	
41	612:17-21	
42	79. Thella Bowens requested two free airline	Objection. Lacks foundation and personal
43	tickets from Hawaiian Airlines and from	knowledge; hearsay. (Evid. Code §§ 403, 702



1 Southwest Airlines because she was on the 2 board of United Way. The tickets were all 3 donated to the Authority. 4 Plaintiff's depo. 619:12-17; 619:22-23; 5 620:19-21; 621:9-11	and 1200.) Hernandez testified that Bowens never asked him directly for any airline benefits. (Hernandez Depo. 549:8-10 [Exh. 2].)
6 80. There was a power struggle between 7 Bryan Enarson and Ted Sexton. Enarson had 8 more control and had one ear of Thella 9 Bowens'. 10 Plaintiff's depo. 645:19-25; 646:1-2	Objection. Lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
11 81. Authority Vice-President Bryan Enarson 12 requested free tickets, upgrades and special 13 privileges from Hawaiian Airlines. 14 Plaintiff's depo. 687:4-15	Objection. Hearsay; lacks foundation. (Evid. Code §§ 403, 702 and 1200.) Hernandez' only knowledge of Enarson's alleged tickets and upgrades comes from other people. (Hernandez Depo. 687:4-15 [Exh. 2].) Further, this fact is irrelevant because it does not state that Enarson actually received any of the alleged requested items.

**Teledyne Ryan Disclosure:**

**Adjudication No. 15: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, fails as a matter of law because Hernandez could not have had a reasonable belief that the Teledyne Ryan lease was unlawful.**

18 <b>Plaintiff's Additional Undisputed Facts and</b> 19 <b>Supporting Evidence</b>	<b>Authority's Response and Supporting</b> <b>Evidence</b>
20 10. Another of Hernandez' duties was the 21 evaluation of a lease from the Port of property 22 located at the west side of the Airport. (The 23 Teledyne Ryan property) The lease of that 24 property likewise contemplated the generation 25 of revenues to cover the lease through its use 26 as a parking lot. The lease had been 27 negotiated by Enarson and was not subject to 28 renegotiation. Decl. J. Hernandez ¶ 4; Plaintiff's depo. 388:8-12	Not disputed for purposes of this motion only.
11. Hernandez discovered this property was likewise contaminated and only a small portion of it was usable. Decl. J. Hernandez ¶ 4; Plaintiff's depo.	Not disputed for purposes of this motion only.

1	389:19-22, 390:3-5, 396:20-25	
2	12. The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million.	Objection. Lacks foundation (Evid. Code § 403); improper opinion (Evid. Code § 800).
3		
4		
5	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 407:2-408:2, 409:3-6	
6		

7 **Adjudication No. 16: Hernandez' First Cause of Action under Labor Code section 1102.5,**  
8 **insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, fails as a**  
9 **matter of law because Hernandez has not identified a state or federal statute, rule or**  
10 **regulation of which he disclosed a violation.**

11	Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
12		
13	10. Another of Hernandez' duties was the evaluation of a lease from the Port of property located at the west side of the Airport. (The Teledyne Ryan property) The lease of that property likewise contemplated the generation of revenues to cover the lease through its use as a parking lot. The lease had been negotiated by Enarson and was not subject to renegotiation.	Not disputed for purposes of this motion only.
14		
15		
16		
17		
18	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 388:8-12	
19		
20	11. Hernandez discovered this property was likewise contaminated and only a small portion of it was usable.	Not disputed for purposes of this motion only.
21		
22	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 389:19-22, 390:3-5, 396:20-25	
23		
24	12. The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million.	Objection. Lacks foundation (Evid. Code § 403); improper opinion (Evid. Code § 800).
25		
26	Decl. J. Hernandez ¶ 4; Plaintiff's depo. 407:2-408:2, 409:3-6	
27		
28		

1 **Adjudication No. 17: Hernandez' First Cause of Action fails as matter of law, insofar as it**  
 2 **is based on any alleged disclosure regarding the Teledyne Ryan lease, because there is no**  
 3 **causal connection between his alleged protected activity and his termination.**

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>10. Another of Hernandez' duties was the evaluation of a lease from the Port of property located at the west side of the Airport. (The Teledyne Ryan property) The lease of that property likewise contemplated the generation of revenues to cover the lease through its use as a parking lot. The lease had been negotiated by Enarson and was not subject to renegotiation.</p> <p>Decl. J. Hernandez ¶ 4; Plaintiff's depo. 388:8-12</p>	<p>Not disputed for purposes of this motion only.</p>
<p>11. Hernandez discovered this property was likewise contaminated and only a small portion of it was usable.</p> <p>Decl. J. Hernandez ¶ 4; Plaintiff's depo. 389:19-22, 390:3-5, 396:20-25</p>	<p>Not disputed for purposes of this motion only.</p>
<p>12. The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million.</p> <p>Decl. J. Hernandez ¶ 4; Plaintiff's depo. 407:2-408:2, 409:3-6</p>	<p>Objection. Lacks foundation (Evid. Code § 403); improper opinion (Evid. Code § 800).</p>
<p>21. On November 2, 2005, Bowens engaged a law firm to investigate Hernandez for "ethics" violations associated with the receipt of benefits from the Authority's vendors. This was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations.</p> <p>Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3</p>	<p>Objection. The second sentence lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)</p> <p>Hernandez' declaration does not state that this was the first time the Authority retained a law firm to investigate ethics violations. Rather, Hernandez states in his declaration that this was the first time <i>that he was aware of</i> that anyone was questioned regarding receipt of tickets.</p>
<p>22. The law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline</p>	<p>Objection to the extent that this is a partial and incomplete summary of the findings in the report.</p>

1	tickets to Hawaii; and (3) charger football	
2	tickets, the value of which placed Hernandez	
3	in violation of the Ethics Code applicable to	
4	Authority employees.	
5	Decl. P. Swan	
6	23. Bowens claims to have terminated	Not disputed for purposes of this motion.
7	Hernandez' employment based on the	
8	conclusions in the report.	
9	Decl. T. Bowens ¶ 9	
10	24. With regard to the "free rounds of golf,"	Objection. Irrelevant. (Evid. Code § 350.)
11	Hernandez cleared the trip with his boss,	
12	Sexton, before going, after disclosing the	
13	nature of the outing and that the golf rounds	
14	were supplied by Mike Parrish.	
15	Decl. J. Hernandez ¶ 9; Plaintiff's depo.	
16	158:18-22; 168:5-24	
17	25. In the process, Sexton admitted he had	Objection. Hearsay. (Evid. Code § 1200.)
18	attended the same golf outing under similar	
19	circumstances.	
20	Decl. J. Hernandez ¶ 9	
21	26. Hernandez compensated Parrish for the	Objection. Lacks foundation; irrelevant.
22	round by buying Parrish's lunch and dinner	(Evid. Code §§ 350 and 403.)
23	and by making gift contributions for the raffle.	The declaration of Pat Swan does not establish
24	The net personal value to Hernandez was	the alleged fact presented.
25	negative by over \$200.	
26	Decl. J. Hernandez ¶ 9; Decl. P. Swan;	
27	Plaintiff's depo. 159:14-19; 163:3-13; 164:10-	
28	14	
29	27. Hernandez had a strong social relationship	Not disputed for purposes of this motion.
30	with Parrish, which included joint family	
31	outings and gatherings, dinners, barbecues and	
32	sporting events.	
33	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl.	
34	M. Parrish ¶ 2	
35	28. With regard to the Hawaii ticket, ticketing	Objection. Lacks foundation and is vague as to
36	benefits were regarded by management as	who in "management" regarded ticketing
37	normal benefit of their workplace, and that	benefits as a normal benefit of the workplace.
38	Sexton assigned Hernandez responsibility on	(Evid. Code § 403.) Further, none of the cited
39	frequent occasions to obtain ticket upgrades	evidence states that ticketing benefits were a
40	for various employees and board members.	normal benefit of the workplace, or that
41	Hernandez specifically discussed whether the	Hernandez discussed whether the practice was
42	practice was ethically acceptable and Sexton	ethically acceptable.
43	replied it was.	

1	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	Hearsay. (Evid. Code § 1200.)
2	Plaintiff's depo. 240:1-25; 602:20-25; 609:1-	
3	611:25	
4	29. Notwithstanding the practice among	Objection. Improper argument and opinion;
5	Hernandez' superiors to receive passes and	lacks foundation. (Evid. Code §§ 403 and
6	upgrades, Hernandez' receipt of those benefits	800.) Further, although Hernandez may have
7	was limited to gifts from personal friends.	received benefits from friends, those friends
8	The tickets on Southwest came from Parrish.	were also employees of the Authority's
9	The tickets on Hawaiian Air came from Janet	vendors. (Hernandez Depo. 191:8-20; 198:8-
10	Nix, another personal friend, who told him she	200:17; 280:1-14; and 281:6-12 [Exh. 1].)
11	gave tickets like those to all kinds of friends	
12	having nothing to do with business.	
13	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan;	
14	Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶	
15	3	
16	30. Moreover, the Hawaiian tickets were listed	Objection. Hearsay. (Evid. Code § 1200.)
17	as "space available" and further identified as	Lacks foundation. (Evid. Code § 403.)
18	having "no dollar value" and could not be	
19	transferred or redeemed.	
20	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ;	
21	Plaintiff's Depo. 280:15-20, 23-25; 281:1-2;	
22	Decl. M. Parrish par. 3	
23	31. With regard to the football tickets, ACE	Objection. Lacks foundation. Hernandez knew
24	parking did not have a contractor or vendor	that Ace Parking tried to obtain a business
25	agreement of any sort with the Authority.	relationship with the Authority in January
26	Decl. J. Hernandez ¶ 12; Decl. P. Swan;	2005. (Hernandez Depo. 151:4-18 [Exh. 1].)
27	Plaintiff's Depo. 268:1-4; 272:5-9	Even prior to that, Lindbergh Parking, Inc.
28		("LPi") was a vendor doing business with the
		Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the
		owner of Ace Parking, is a 40% owner of LPi.
		( <i>Id.</i> at 75:18-19, 127:10-128:2.)
	32. Hernandez had a longstanding friendship	Not disputed for purposes of this motion only.
	with the ACE Parking manager who invited	
	him to the game which preceded Hernandez'	
	employment with the Authority. They were	
	friends from Hernandez' prior employment	
	relationship with ACE Parking.	
	Decl. J. Hernandez ¶ 12; Decl. P. Swan	
	33. During Swan's interviews with	Objection. Hearsay. (Evid. Code § 1200.)
	Hernandez, he expressed no interest in the fact	
	that Parrish and Hernandez were close	
	personal friends.	
	Decl. J. Hernandez ¶ 13	



1	34. He avoided discussion of the tendency of other employees such as Bowens and Sexton to make active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars.	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
2		
3		Lacks foundation. (Evid. Code § 403.)
4	Decl. J. Hernandez ¶ 13	Hernandez has not established that employees "made active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars."
5		
6	35. When Hernandez attempted to explain these friendships and practices, Swan cut him off and would state that he was not interested in the nature of those friendships and what the office practice was.	Objection. Hearsay. (Evid. Code § 1200.)
7		
8		
9	Decl. J. Hernandez ¶ 13	
10	36. Hernandez had previously received outstanding performance evaluations.	Not disputed for purposes of this motion only.
11	Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 786:9-18	
12		
13	37. The Authority did, in fact, have a progressive disciplinary policy set forth in writing, which emphasizes the Authority's commitment to preserve employment through pre-termination warnings and training.	This "fact" is contrary to Hernandez' own testimony and thus cannot create a triable issue of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-22.) Hernandez admitted in his deposition that he was an at-will employee and that he could be terminated at any time, with or without cause. (Hernandez Depo. 115:21-116:6; Exh. 16.) If he could be terminated at any time, then the Authority was under no obligation to progressively discipline Hernandez. Further, this fact lacks foundation because the cited testimony does not establish that the alleged policy is in writing.
14		
15		
16	Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 317:14-16	
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19		
20	38. That the Authority failed to adhere to this policy and instead routed the matter to an expensive and contentious law firm is a truly extraordinary decision.	Objection. Lacks foundation.
21		
22	Decl. J. Hernandez ¶ 14	
23		
24	39. Ace Parking did not have a direct service agreement with the Airport Authority. Ace did not have any sort of a business relationship with the Airport Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
25		
26	Plaintiff's depo. 149:15-20; 150:20-25	
27		
28		



1	41. Ted Sexton told Hernandez it would be okay to go to the Southwest Airline Golf Tournaments. Sexton knew he was a guest of Southwest's.	Objection. Lacks foundation. (Evid. Code § 403.) Hearsay. (Evid. Code § 1200.)
2	Plaintiff's depo. 158:18-22; 168:5-8, 12-13, 18, 21-24	
3		
4		
5	42. Hernandez had absolutely never received free food from the concessions in the Airport terminals.	Not disputed for purposes of this motion only.
6	Plaintiff's depo. 201:16-18	
7		
8	44. Ted Sexton told Hernandez to write everything on the form, whether he thought it proper to do so or not.	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
9	Plaintiff's depo. 293:14-20	
10		
11	74. Hernandez requested ticket changes for Thella Bowens over five times. He did no less than five different itinerary changes, plus date changes and time changes. The airlines' charges for itinerary and date changes range between \$50 to \$100 per boarding document. Thella Bowens was not charged by the airlines for the changes. Thella could have changed her tickets by simply calling reservations.	Objection. Irrelevant; hearsay; improper opinion; lacks foundation and personal knowledge. (Evid. Code §§ 350, 403, 702 and 1200.)
12	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-22; 554:1-10	Hernandez testified that Bowens never directly asked him for an upgrade or flight change. (Hernandez Depo. 549:8-10 [Exh. 2].) This statement also lacks foundation as to how much and whether an airline charges for changes and upgrades.
13		
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18	75. Ted Sexton instructed Hernandez that he should get Thella access to premier airline lounges so she wouldn't have to wait in the public waiting rooms. Sexton requested that even for the briefest moments if the plane was late to have Thella sit in the lounge.	Objection. Irrelevant and hearsay. (Evid. Code §§ 350 and 1200.)
19	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-7	
20		
21		
22		
23	76. Ted Sexton asked if special privileges could be obtained for Thella Bowens' sister.	Objection. Vague; hearsay. (Evid. Code § 1200.)
24	Plaintiff's depo. 561:1-25	
25		
26	77. Authority board member Morris Vance requested and received at least two upgrades to first class and there were no charges. He requested several other first-class upgrades and paid no charges for upgrades or flight changes.	Objection. Lacks foundation and hearsay. (Evid. Code §§ 403, 702 and 1200.)
27		
28		

1	Plaintiff's depo. 595:25; 596:10-12; 599:1-6;	
2	599:25; 600:3	
3	78. Authority Vice-President Vernon Evans	Objection. Hearsay and lacks foundation.
4	repeatedly requested changes in flight	(Evid. Code §§ 403 and 1200.)
5	schedules no less than 15-20 times in the last	
6	two years. Ted Sexton told Hernandez to "do	
7	whatever you can." Sexton knew the changes	
8	were at no cost. Hernandez asked Sexton if it	
9	was okay to change Evans' tickets at the time.	
10	Plaintiff's depo. 604:5-11; 604:12-25; 605:18-	
11	23; 607:8-12; 608:6-10; 609:8-18; 610:1-13;	
12	612:17-21	
13	79. Thella Bowens requested two free airline	Objection. Lacks foundation and personal
14	tickets from Hawaiian Airlines and from	knowledge; hearsay. (Evid. Code §§ 403, 702
15	Southwest Airlines because she was on the	and 1200.) Hernandez testified that Bowens
16	board of United Way. The tickets were all	never asked him directly for any airline
17	donated to the Authority.	benefits. (Hernandez Depo. 549:8-10 [Exh.
18	Plaintiff's depo. 619:12-17; 619:22-23;	2].)
19	620:19-21; 621:9-11	
20	80. There was a power struggle between	Objection. Lacks foundation and personal
21	Bryan Enarson and Ted Sexton. Enarson had	knowledge. (Evid. Code §§ 403 and 702.)
22	more control and had one ear of Thella	
23	Bowens'.	
24	Plaintiff's depo. 645:19-25; 646:1-2	
25	81. Authority Vice-President Bryan Enarson	Objection. Hearsay; lacks foundation. (Evid.
26	requested free tickets, upgrades and special	Code §§ 403, 702 and 1200.) Hernandez' only
27	privileges from Hawaiian Airlines.	knowledge of Enarson's alleged tickets and
28	Plaintiff's depo. 687:4-15	upgrades comes from other people.
		(Hernandez Depo. 687:4-15 [Exh. 2].) Further,
		this fact is irrelevant because it does not state
		that Enarson actually received any of the
		alleged requested items.

#### RESTROOM PROJECT DISCLOSURE:

Adjudication No. 18: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez could not have had a reasonable belief that the restroom project was unlawful.

Plaintiff's Additional Undisputed Facts and	Authority's Response and Supporting
---------------------------------------------	-------------------------------------

Supporting Evidence	Evidence
<p>14. Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the state requirements that they be accessible by wheel chair, as required by the Americans with Disabilities Act (ADA).</p> <p>Decl. J. Hernandez ¶5; Plaintiff's depo. 349:23-350:5, 352:3-353:8, 336:20-21, 337:17-19</p>	<p>Not disputed for purposes of this motion only.</p>
<p>15. He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so by Enarson because Enarson had made handshake agreements with the concessionaires.</p> <p>Decl. J. Hernandez ¶ 5; Plaintiff's depo. 333:10-17, 335:4-8, 339:6-8, 336:20-21, 343:20-25</p>	<p>Objection. Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Improper Legal Conclusion. (Evid. Code § 800); Hearsay. (Evid. Code § 1200.) Vague as to "he".</p>

Adjudication No. 19: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez admits that the Authority did not violate the ADA, nor did it express its intention to violate the ADA.

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>14. Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the state requirements that they be accessible by wheel chair, as required by the Americans with Disabilities Act (ADA).</p> <p>Decl. J. Hernandez ¶5; Plaintiff's depo. 349:23-350:5, 352:3-353:8, 336:20-21,</p>	<p>Not disputed for purposes of this motion only.</p>

337:17-19

15. He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so by Enarson because Enarson had made handshake agreements with the concessionaires.

Decl. J. Hernandez ¶ 5; Plaintiff's depo. 333:10-17, 335:4-8, 339:6-8, 336:20-21, 343:20-25

Objection. Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Improper Legal Conclusion. (Evid. Code § 800); Hearsay. (Evid. Code § 1200.) Vague as to "he".

**Adjudication No. 20: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.**

**Plaintiff's Additional Undisputed Facts and Supporting Evidence**

**Authority's Response and Supporting Evidence**

14. Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the state requirements that they be accessible by wheel chair, as required by the Americans with Disabilities Act (ADA).

Decl. J. Hernandez ¶ 5; Plaintiff's depo. 349:23-350:5, 352:3-353:8, 336:20-21, 337:17-19

Not disputed for purposes of this motion only.

15. He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so by Enarson because Enarson had made handshake agreements with the concessionaires.

Decl. J. Hernandez ¶ 5; Plaintiff's depo. 333:10-17, 335:4-8, 339:6-8, 336:20-21, 343:20-25

Objection. Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Improper Legal Conclusion. (Evid. Code § 800); Hearsay. (Evid. Code § 1200.) Vague as to "he".

**Adjudication No. 21: Hernandez' First Cause of Action, insofar as it is based on any alleged**

disclosure regarding the restroom project, fails as matter of law because there is no causal connection between his alleged protected activity and his termination.

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>14. Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the state requirements that they be accessible by wheel chair, as required by the Americans with Disabilities Act (ADA).</p> <p>Decl. J. Hernandez ¶5; Plaintiff's depo. 349:23-350:5, 352:3-353:8, 336:20-21, 337:17-19</p>	<p>Not disputed for purposes of this motion only.</p>
<p>15. He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so by Enarson because Enarson had made handshake agreements with the concessionaires.</p> <p>Decl. J. Hernandez ¶ 5; Plaintiff's depo. 333:10-17, 335:4-8, 339:6-8, 336:20-21, 343:20-25</p>	<p>Objection. Lacks Foundation. (Evid. Code § 403.) Lacks Personal Knowledge. (Evid. Code § 702.) Improper Legal Conclusion. (Evid. Code § 800); Hearsay. (Evid. Code § 1200.) Vague as to "he".</p>
<p>21. On November 2, 2005, Bowens engaged a law firm to investigate Hernandez for "ethics" violations associated with the receipt of benefits from the Authority's vendors. This was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations.</p> <p>Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3</p>	<p>Objection. The second sentence lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)</p> <p>Hernandez' declaration does not state that this was the first time the Authority retained a law firm to investigate ethics violations. Rather, Hernandez states in his declaration that this was the first time <i>that he was aware of</i> that anyone was questioned regarding receipt of tickets.</p>
<p>22. The law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline tickets to Hawaii; and (3) charger football tickets, the value of which placed Hernandez in violation of the Ethics Code applicable to Authority employees.</p> <p>Decl. P. Swan</p>	<p>Objection to the extent that this is a partial and incomplete summary of the findings in the report.</p>



1	23. Bowens claims to have terminated Hernandez' employment based on the conclusions in the report.	Not disputed for purposes of this motion.
2		
3	Decl. T. Bowens ¶ 9	
4	24. With regard to the "free rounds of golf," Hernandez cleared the trip with his boss, Sexton, before going, after disclosing the nature of the outing and that the golf rounds were supplied by Mike Parrish.	Objection. Irrelevant. (Evid. Code § 350.)
5		
6		
7	Decl. J. Hernandez ¶ 9; Plaintiff's depo. 158:18-22; 168:5-24	
8		
9	25. In the process, Sexton admitted he had attended the same golf outing under similar circumstances.	Objection. Hearsay. (Evid. Code § 1200.)
10		
11	Decl. J. Hernandez ¶ 9	
12	26. Hernandez compensated Parrish for the round by buying Parrish's lunch and dinner and by making gift contributions for the raffle. The net personal value to Hernandez was negative by over \$200.	Objection. Lacks foundation; irrelevant. (Evid. Code §§ 350 and 403.)
13		The declaration of Pat Swan does not establish the alleged fact presented.
14		
15	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Plaintiff's depo. 159:14-19; 163:3-13; 164:10-14	
16		
17	27. Hernandez had a strong social relationship with Parrish, which included joint family outings and gatherings, dinners, barbecues and sporting events.	Not disputed for purposes of this motion.
18		
19	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl. M. Parrish ¶ 2	
20		
21	28. With regard to the Hawaii ticket, ticketing benefits were regarded by management as normal benefit of their workplace, and that Sexton assigned Hernandez responsibility on frequent occasions to obtain ticket upgrades for various employees and board members. Hernandez specifically discussed whether the practice was ethically acceptable and Sexton replied it was.	Objection. Lacks foundation and is vague as to who in "management" regarded ticketing benefits as a normal benefit of the workplace. (Evid. Code § 403.) Further, none of the cited evidence states that ticketing benefits were a normal benefit of the workplace, or that Hernandez discussed whether the practice was ethically acceptable.
22		
23		
24		
25		Hearsay. (Evid. Code § 1200.)
26	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 240:1-25; 602:20-25; 609:1-611:25	
27		
28	29. Notwithstanding the practice among	Objection. Improper argument and opinion;



1	Hernandez' superiors to receive passes and upgrades, Hernandez' receipt of those benefits was limited to gifts from personal friends. The tickets on Southwest came from Parrish. The tickets on Hawaiian Air came from Janet Nix, another personal friend, who told him she gave tickets like those to all kinds of friends having nothing to do with business.	lacks foundation. (Evid. Code §§ 403 and 800.) Further, although Hernandez may have received benefits from friends, those friends were also employees of the Authority's vendors. (Hernandez Depo. 191:8-20; 198:8-200:17; 280:1-14; and 281:6-12 [Exh. 1].)
2	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶ 3	
3	30. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed.	Objection. Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.)
4	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ; Plaintiff's Depo. 280:15-20, 23-25; 281:1-2; Decl. M. Parrish par. 3	
5	31. With regard to the football tickets, ACE parking did not have a contractor or vendor agreement of any sort with the Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
6	Decl. J. Hernandez ¶ 12; Decl. P. Swan; Plaintiff's Depo. 268:1-4; 272:5-9	
7	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends from Hernandez' prior employment relationship with ACE Parking.	Not disputed for purposes of this motion only.
8	Decl. J. Hernandez ¶ 12; Decl. P. Swan	
9	33. During Swan's interviews with Hernandez, he expressed no interest in the fact that Parrish and Hernandez were close personal friends.	Objection. Hearsay. (Evid. Code § 1200.)
10	Decl. J. Hernandez ¶ 13	
11	34. He avoided discussion of the tendency of other employees such as Bowens and Sexton to make active and aggressive use of their positions to acquire ticketing upgrades and benefits worth thousands of dollars.	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.) Hernandez has not established that employees "made active and aggressive use of their

1	Decl. J. Hernandez ¶ 13	positions to acquire ticketing upgrades and benefits worth thousands of dollars."
2		
3	35. When Hernandez attempted to explain these friendships and practices, Swan cut him off and would state that he was not interested in the nature of those friendships and what the office practice was.	Objection. Hearsay. (Evid. Code § 1200.)
4		
5	Decl. J. Hernandez ¶ 13	
6		
7	36. Hernandez had previously received outstanding performance evaluations.	Not disputed for purposes of this motion only.
8	Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 786:9-18	
9		
10	37. The Authority did, in fact, have a progressive disciplinary policy set forth in writing, which emphasizes the Authority's commitment to preserve employment through pre-termination warnings and training.	This "fact" is contrary to Hernandez' own testimony and thus cannot create a triable issue of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-22.) Hernandez admitted in his deposition that he was an at-will employee and that he could be terminated at any time, with or without cause. (Hernandez Depo. 115:21-116:6; Exh. 16.) If he could be terminated at any time, then the Authority was under no obligation to progressively discipline Hernandez. Further, this fact lacks foundation because the cited testimony does not establish that the alleged policy is in writing.
11	Decl. J. Hernandez ¶ 14; Plaintiff's Depo. 317:14-16	
12		
13		
14		
15		
16		
17	38. That the Authority failed to adhere to this policy and instead routed the matter to an expensive and contentious law firm is a truly extraordinary decision.	Objection. Lacks foundation.
18		
19	Decl. J. Hernandez ¶ 14	
20		
21	39. Ace Parking did not have a direct service agreement with the Airport Authority. Ace did not have any sort of a business relationship with the Airport Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
22	Plaintiff's depo. 149:15-20; 150:20-25	
23		
24		
25	41. Ted Sexton told Hernandez it would be okay to go to the Southwest Airline Golf Tournaments. Sexton knew he was a guest of Southwest's.	Objection. Lacks foundation. (Evid. Code § 403.) Hearsay. (Evid. Code § 1200.)
26		
27	Plaintiff's depo. 158:18-22; 168:5-8, 12-13,	
28		

1	18, 21-24	
2	42. Hernandez had absolutely never received	Not disputed for purposes of this motion only.
3	free food from the concessions in the Airport	
4	terminals.	
5	Plaintiff's depo. 201:16-18	
6	44. Ted Sexton told Hernandez to write	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
7	everything on the form, whether he thought it	
8	proper to do so or not.	
9	Plaintiff's depo. 293:14-20	
10	74. Hernandez requested ticket changes for	Objection. Irrelevant; hearsay; improper
11	Thella Bowens over five times. He did no	
12	less than five different itinerary changes, plus	opinion; lacks foundation and personal
13	date changes and time changes. The airlines'	
14	charges for itinerary and date changes range	knowledge. (Evid. Code §§ 350, 403, 702 and
15	between \$50 to \$100 per boarding document.	
16	Thella Bowens was not charged by the airlines	Hernandez testified that Bowens never directly
17	for the changes. Thella could have changed	
18	her tickets by simply calling reservations.	asked him for an upgrade or flight change.
19	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-	
20	22; 554:1-10	(Hernandez Depo. 549:8-10 [Exh. 2].) This
21		
22	75. Ted Sexton instructed Hernandez that he	statement also lacks foundation as to how much
23	should get Thella access to premier airline	
24	lounges so she wouldn't have to wait in the	and whether an airline charges for changes and
25	public waiting rooms. Sexton requested that	
26	even for the briefest moments if the plane was	upgrades.
27	late to have Thella sit in the lounge.	
28	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-	
	7	
	76. Ted Sexton asked if special privileges	Objection. Irrelevant and hearsay. (Evid. Code
	could be obtained for Thella Bowens' sister.	
	Plaintiff's depo. 561:1-25	
	77. Authority board member Morris Vance	Objection. Vague; hearsay. (Evid. Code §
	requested and received at least two upgrades	
	to first class and there were no charges. He	1200.)
	requested several other first-class upgrades	
	and paid no charges for upgrades or flight	Objection. Lacks foundation and hearsay.
	changes.	
	Plaintiff's depo. 595:25; 596:10-12; 599:1-6;	(Evid. Code §§ 403, 702 and 1200.)
	599:25; 600:3	
	78. Authority Vice-President Vernon Evans	Objection. Hearsay and lacks foundation.
	repeatedly requested changes in flight	
	schedules no less than 15-20 times in the last	(Evid. Code §§ 403 and 1200.)

1 two years. Ted Sexton told Hernandez to "do  
2 whatever you can." Sexton knew the changes  
3 were at no cost. Hernandez asked Sexton if it  
4 was okay to change Evans' tickets at the time.

5 Plaintiff's depo. 604:5-11; 604:12-25; 605:18-  
6 23; 607:8-12; 608:6-10; 609:8-18; 610:1-13;  
7 612:17-21

8 79. Thella Bowens requested two free airline  
9 tickets from Hawaiian Airlines and from  
10 Southwest Airlines because she was on the  
11 board of United Way. The tickets were all  
12 donated to the Authority.

13 Plaintiff's depo. 619:12-17; 619:22-23;  
14 620:19-21; 621:9-11

Objection. Lacks foundation and personal  
knowledge; hearsay. (Evid. Code §§ 403, 702  
and 1200.) Hernandez testified that Bowens  
never asked him directly for any airline  
benefits. (Hernandez Depo. 549:8-10 [Exh.  
2].)

15 80. There was a power struggle between  
16 Bryan Enarson and Ted Sexton. Enarson had  
17 more control and had one ear of Thella  
18 Bowens'.

19 Plaintiff's depo. 645:19-25; 646:1-2

Objection. Lacks foundation and personal  
knowledge. (Evid. Code §§ 403 and 702.)

20 81. Authority Vice-President Bryan Enarson  
21 requested free tickets, upgrades and special  
22 privileges from Hawaiian Airlines.

23 Plaintiff's depo. 687:4-15

Objection. Hearsay; lacks foundation. (Evid.  
Code §§ 403, 702 and 1200.) Hernandez' only  
knowledge of Enarson's alleged tickets and  
upgrades comes from other people.  
(Hernandez Depo. 687:4-15 [Exh. 2].) Further,  
this fact is irrelevant because it does not state  
that Enarson actually received any of the  
alleged requested items.

#### 24 LPI DISCLOSURE

25 **Adjudication No. 22: Hernandez' First Cause of Action under Labor Code section 1102.5,**  
26 **insofar as it is based on any alleged disclosure regarding LPI, fails as a matter of law**  
27 **because Hernandez could not have had a reasonable belief that he disclosed unlawful acts.**

#### 28 Plaintiff's Additional Undisputed Facts and Supporting Evidence

#### Authority's Response and Supporting Evidence

17. Another of Hernandez' duties was to help  
negotiate and monitor contracts for the  
management of parking services. The low  
bidder (based on "projected" reimbursable  
expenses) on a contract to manage the  
Airport's parking lots was Lindbergh Parking  
Incorporated (LPI).

Not disputed for purposes of this motion only.

1	Decl. J. Hernandez ¶ 6	
2	18. Its bid was so low that Hernandez – who	Not disputed for purposes of this motion only.
3	had managed parking himself – suspected the	
4	bid was insincere. He thereafter closely	
5	monitored the performance of the contract and	
6	noted LPI was overcharging the Authority	
7	approximately \$1 million to 1.5 million per	
8	year. This estimate was based, among other	
9	things, on the fact that LPI (1) did not lease	
10	new shuttle transportation vehicles as stated in	
11	its bid (but instead used older shuttles owned	
12	by LPI); (2) was seeking reimbursement for an	
13	unnecessary management position	
14	(owner/manager being paid for management	
15	work he did not perform); and (3) double-	
16	billing the Authority for workers'	
17	compensation insurance.	
18	Decl. J. Hernandez ¶ 6; Plaintiff's Depo.	
19	478:16-22; 481:1-4; 483:2-6	

12  
13 **Adjudication No. 23: Hernandez' First Cause of Action under Labor Code section 1102.5,**  
14 **insofar as it is based on any alleged disclosure regarding LPI, fails as a matter of law**  
15 **because Hernandez has not identified a state or federal statute, rule or regulation of which**  
16 **he disclosed a violation.**

17	<b>Plaintiff's Additional Undisputed Facts and</b>	<b>Authority's Response and Supporting</b>
18	<b>Supporting Evidence</b>	<b>Evidence</b>
19	17. Another of Hernandez' duties was to help	Not disputed for purposes of this motion only.
20	negotiate and monitor contracts for the	
21	management of parking services. The low	
22	bidder (based on "projected" reimbursable	
23	expenses) on a contract to manage the	
24	Airport's parking lots was Lindbergh Parking	
25	Incorporated (LPI).	
26	Decl. J. Hernandez ¶ 6	
27	18. Its bid was so low that Hernandez – who	
28	had managed parking himself – suspected the	
29	bid was insincere. He thereafter closely	
30	monitored the performance of the contract and	
31	noted LPI was overcharging the Authority	
32	approximately \$1 million to 1.5 million per	
33	year. This estimate was based, among other	
34	things, on the fact that LPI (1) did not lease	
35	new shuttle transportation vehicles as stated in	
36	its bid (but instead used older shuttles owned	



1 by LPI); (2) was seeking reimbursement for an  
 2 unnecessary management position  
 3 (owner/manager being paid for management  
 4 work he did not perform); and (3) double-  
 5 billing the Authority for workers'  
 6 compensation insurance.

Decl. J. Hernandez ¶ 6; Plaintiff's Depo.  
 478:16-22; 481:1-4; 483:2-6

7 **Adjudication No. 24: Hernandez' First Cause of Action fails as matter of law, insofar as it**  
 8 **is based on any alleged disclosure regarding LPI, because there is no causal connection**  
 9 **between his alleged protected activity and his termination.**

Plaintiff's Additional Undisputed Facts and Supporting Evidence	Authority's Response and Supporting Evidence
<p>11 17. Another of Hernandez' duties was to help          12 negotiate and monitor contracts for the          13 management of parking services. The low          14 bidder (based on "projected" reimbursable          15 expenses) on a contract to manage the          16 Airport's parking lots was Lindbergh Parking          Incorporated (LPI).</p> <p>Decl. J. Hernandez ¶ 6</p>	<p>Not disputed for purposes of this motion only.</p>
<p>17 18. Its bid was so low that Hernandez – who          18 had managed parking himself – suspected the          19 bid was insincere. He thereafter closely          20 monitored the performance of the contract and          21 noted LPI was overcharging the Authority          22 approximately \$1 million to 1.5 million per          23 year. This estimate was based, among other          24 things, on the fact that LPI (1) did not lease          25 new shuttle transportation vehicles as stated in          26 its bid (but instead used older shuttles owned          27 by LPI); (2) was seeking reimbursement for an          28 unnecessary management position          (owner/manager being paid for management          work he did not perform); and (3) double-          billing the Authority for workers'          compensation insurance.</p> <p>Decl. J. Hernandez ¶ 6; Plaintiff's Depo.          478:16-22; 481:1-4; 483:2-6</p>	<p>Not disputed for purposes of this motion only.</p>
<p>21. On November 2, 2005, Bowens engaged a          law firm to investigate Hernandez for "ethics"          violations associated with the receipt of          benefits from the Authority's vendors. This</p>	<p>Objection. The second sentence lacks          foundation and personal knowledge. (Evid.          Code §§ 403 and 702.)</p>



1	was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations.	Hernandez' declaration does not state that this was the first time the Authority retained a law firm to investigate ethics violations. Rather, Hernandez states in his declaration that this was the first time <i>that he was aware of</i> that anyone was questioned regarding receipt of tickets.
2	Decl. J. Hernandez ¶ 7; Decl. P. Swan ¶ 3	
3		
4		
5	22. The law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline tickets to Hawaii; and (3) charger football tickets, the value of which placed Hernandez in violation of the Ethics Code applicable to Authority employees.	Objection to the extent that this is a partial and incomplete summary of the findings in the report.
6		
7		
8		
9	Decl. P. Swan	
10	23. Bowens claims to have terminated Hernandez' employment based on the conclusions in the report.	Not disputed for purposes of this motion.
11		
12	Decl. T. Bowens ¶ 9	
13	24. With regard to the "free rounds of golf," Hernandez cleared the trip with his boss, Sexton, before going, after disclosing the nature of the outing and that the golf rounds were supplied by Mike Parrish.	Objection. Irrelevant. (Evid. Code § 350.)
14		
15		
16	Decl. J. Hernandez ¶ 9; Plaintiff's depo. 158:18-22; 168:5-24	
17		
18	25. In the process, Sexton admitted he had attended the same golf outing under similar circumstances.	Objection. Hearsay. (Evid. Code § 1200.)
19		
20	Decl. J. Hernandez ¶ 9	
21	26. Hernandez compensated Parrish for the round by buying Parrish's lunch and dinner and by making gift contributions for the raffle. The net personal value to Hernandez was negative by over \$200.	Objection. Lacks foundation; irrelevant. (Evid. Code §§ 350 and 403.)
22		The declaration of Pat Swan does not establish the alleged fact presented.
23		
24	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Plaintiff's depo. 159:14-19; 163:3-13; 164:10-14	
25		
26	27. Hernandez had a strong social relationship with Parrish, which included joint family outings and gatherings, dinners, barbecues and sporting events.	Not disputed for purposes of this motion.
27		
28		

1	Decl. J. Hernandez ¶ 9; Decl. P. Swan; Decl. M. Parrish ¶ 2	
2		
3	28. With regard to the Hawaii ticket, ticketing benefits were regarded by management as normal benefit of their workplace, and that	Objection. Lacks foundation and is vague as to who in "management" regarded ticketing
4	Sexton assigned Hernandez responsibility on frequent occasions to obtain ticket upgrades for various employees and board members.	benefits as a normal benefit of the workplace. (Evid. Code § 403.) Further, none of the cited
5	Hernandez specifically discussed whether the practice was ethically acceptable and Sexton replied it was.	evidence states that ticketing benefits were a normal benefit of the workplace, or that
6		Hernandez discussed whether the practice was ethically acceptable.
7	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 240:1-25; 602:20-25; 609:1-611:25	Hearsay. (Evid. Code § 1200.)
8		
9	29. Notwithstanding the practice among Hernandez' superiors to receive passes and upgrades, Hernandez' receipt of those benefits was limited to gifts from personal friends.	Objection. Improper argument and opinion; lacks foundation. (Evid. Code §§ 403 and 800.) Further, although Hernandez may have
10	The tickets on Southwest came from Parrish. The tickets on Hawaiian Air came from Janet Nix, another personal friend, who told him she gave tickets like those to all kinds of friends having nothing to do with business.	received benefits from friends, those friends were also employees of the Authority's vendors. (Hernandez Depo. 191:8-20; 198:8-200:17; 280:1-14; and 281:6-12 [Exh. 1].)
11		
12	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; Plaintiff's depo. 199:3-22; Decl. M. Parrish ¶ 3	
13		
14		
15		
16	30. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed.	Objection. Hearsay. (Evid. Code § 1200.) Lacks foundation. (Evid. Code § 403.)
17		
18	Decl. J. Hernandez ¶ 10-11; Decl. P. Swan; ; Plaintiff's Depo. 280:15-20, 23-25; 281:1-2; Decl. M. Parrish par. 3	
19		
20		
21	31. With regard to the football tickets, ACE parking did not have a contractor or vendor agreement of any sort with the Authority.	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. (Id. at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. (Id. at 75:18-19, 127:10-128:2.)
22	Decl. J. Hernandez ¶ 12; Decl. P. Swan; Plaintiff's Depo. 268:1-4; 272:5-9	
23		
24		
25		
26		
27	32. Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were	Not disputed for purposes of this motion only.
28		

1	friends from Hernandez' prior employment relationship with ACE Parking.	
2	Decl. J. Hernandez ¶ 12; Decl. P. Swan	
3	33. During Swan's interviews with	Objection. Hearsay. (Evid. Code § 1200.)
4	Hernandez, he expressed no interest in the fact	
5	that Parrish and Hernandez were close	
6	personal friends.	
7	Decl. J. Hernandez ¶ 13	
8	34. He avoided discussion of the tendency of	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
9	other employees such as Bowens and Sexton	
10	to make active and aggressive use of their	Lacks foundation. (Evid. Code § 403.)
11	positions to acquire ticketing upgrades and	Hernandez has not established that employees
12	benefits worth thousands of dollars.	"made active and aggressive use of their
13	Decl. J. Hernandez ¶ 13	positions to acquire ticketing upgrades and
14		benefits worth thousands of dollars."
15	35. When Hernandez attempted to explain	Objection. Hearsay. (Evid. Code § 1200.)
16	these friendships and practices, Swan cut him	
17	off and would state that he was not interested	
18	in the nature of those friendships and what the	
19	office practice was.	
20	Decl. J. Hernandez ¶ 13	
21	36. Hernandez had previously received	Not disputed for purposes of this motion only.
22	outstanding performance evaluations.	
23	Decl. J. Hernandez ¶ 14; Plaintiff's Depo.	
24	786:9-18	
25	37. The Authority did, in fact, have a	This "fact" is contrary to Hernandez' own
26	progressive disciplinary policy set forth in	testimony and thus cannot create a triable issue
27	writing, which emphasizes the Authority's	of fact. ( <i>D'Amico, supra</i> , 11 Cal.3d at p. 21-
28	commitment to preserve employment through	22.) Hernandez admitted in his deposition that
	pre-termination warnings and training.	he was an at-will employee and that he could
	Decl. J. Hernandez ¶ 14; Plaintiff's Depo.	be terminated at any time, with or without
	317:14-16	cause. (Hernandez Depo. 115:21-116:6; Exh.
		16.) If he could be terminated at any time, then
		the Authority was under no obligation to
		progressively discipline Hernandez. Further,
		this fact lacks foundation because the cited
		testimony does not establish that the alleged
		policy is in writing.
	38. That the Authority failed to adhere to this	Objection. Lacks foundation.
	policy and instead routed the matter to an	
	expensive and contentious law firm is a truly	
	extraordinary decision.	

1	Decl. J. Hernandez ¶ 14	
2	39. Ace Parking did not have a direct service	Objection. Lacks foundation. Hernandez knew that Ace Parking tried to obtain a business relationship with the Authority in January 2005. (Hernandez Depo. 151:4-18 [Exh. 1].) Even prior to that, Lindbergh Parking, Inc. ("LPi") was a vendor doing business with the Authority. ( <i>Id.</i> at 127:19-22.) Scott Jones, the owner of Ace Parking, is a 40% owner of LPi. ( <i>Id.</i> at 75:18-19, 127:10-128:2.)
3	agreement with the Airport Authority. Ace	
4	did not have any sort of a business relationship with the Airport Authority.	
5	Plaintiff's depo. 149:15-20; 150:20-25	
6	41. Ted Sexton told Hernandez it would be	Objection. Lacks foundation. (Evid. Code § 403.) Hearsay. (Evid. Code § 1200.)
7	okay to go to the Southwest Airline Golf	
8	Tournaments. Sexton knew he was a guest of Southwest's.	
9	Plaintiff's depo. 158:18-22; 168:5-8, 12-13, 18, 21-24	
10	42. Hernandez had absolutely never received	Not disputed for purposes of this motion only.
11	free food from the concessions in the Airport terminals.	
12	Plaintiff's depo. 201:16-18	
13	44. Ted Sexton told Hernandez to write	Objection. Vague as to "he." Hearsay. (Evid. Code § 1200.)
14	everything on the form, whether he thought it proper to do so or not.	
15	Plaintiff's depo. 293:14-20	
16	74. Hernandez requested ticket changes for	Objection. Irrelevant; hearsay; improper opinion; lacks foundation and personal knowledge. (Evid. Code §§ 350, 403, 702 and 1200.)  Hernandez testified that Bowens never directly asked him for an upgrade or flight change. (Hernandez Depo. 549:8-10 [Exh. 2].) This statement also lacks foundation as to how much and whether an airline charges for changes and upgrades.
17	Thella Bowens over five times. He did no	
18	less than five different itinerary changes, plus date changes and time changes. The airlines' charges for itinerary and date changes range between \$50 to \$100 per boarding document. Thella Bowens was not charged by the airlines for the changes. Thella could have changed her tickets by simply calling reservations.	
19	Plaintiff's depo. 550:15-551:1, 6-8; 551:21-22; 554:1-10	
20	75. Ted Sexton instructed Hernandez that he should get Thella access to premier airline lounges so she wouldn't have to wait in the public waiting rooms. Sexton requested that even for the briefest moments if the plane was late to have Thella sit in the lounge.	Objection. Irrelevant and hearsay. (Evid. Code §§ 350 and 1200.)
21	Plaintiff's depo. 556:19-23; 558:18-24; 559:2-7	
22		
23	76. Ted Sexton asked if special privileges	Objection. Vague; hearsay. (Evid. Code §
24		
25		
26		
27		
28		

PAUL, PLEVIN,  
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OPPOSITION TO PLAINTIFF'S SEPARATE  
STATEMENT OF ADDITIONAL UNDISPUTED  
MATERIAL FACTS RE MSJ

1	could be obtained for Thella Bowens' sister.	1200.)
2	Plaintiff's depo. 561:1-25	
3	77. Authority board member Morris Vance requested and received at least two upgrades to first class and there were no charges. He requested several other first-class upgrades and paid no charges for upgrades or flight changes.	Objection. Lacks foundation and hearsay. (Evid. Code §§ 403, 702 and 1200.)
4		
5		
6	Plaintiff's depo. 595:25; 596:10-12; 599:1-6; 599:25; 600:3	
7		
8	78. Authority Vice-President Vernon Evans repeatedly requested changes in flight schedules no less than 15-20 times in the last two years. Ted Sexton told Hernandez to "do whatever you can." Sexton knew the changes were at no cost. Hernandez asked Sexton if it was okay to change Evans' tickets at the time.	Objection. Hearsay and lacks foundation. (Evid. Code §§ 403 and 1200.)
9		
10		
11		
12	Plaintiff's depo. 604:5-11; 604:12-25; 605:18-23; 607:8-12; 608:6-10; 609:8-18; 610:1-13; 612:17-21	
13		
14	79. Thella Bowens requested two free airline tickets from Hawaiian Airlines and from Southwest Airlines because she was on the board of United Way. The tickets were all donated to the Authority.	Objection. Lacks foundation and personal knowledge; hearsay. (Evid. Code §§ 403, 702 and 1200.) Hernandez testified that Bowens never asked him directly for any airline benefits. (Hernandez Depo. 549:8-10 [Exh. 2].)
15		
16		
17	Plaintiff's depo. 619:12-17; 619:22-23; 620:19-21; 621:9-11	
18		
19	80. There was a power struggle between Bryan Enarson and Ted Sexton. Enarson had more control and had one ear of Thella Bowens'.	Objection. Lacks foundation and personal knowledge. (Evid. Code §§ 403 and 702.)
20		
21	Plaintiff's depo. 645:19-25; 646:1-2	
22	81. Authority Vice-President Bryan Enarson requested free tickets, upgrades and special privileges from Hawaiian Airlines.	Objection. Hearsay; lacks foundation. (Evid. Code §§ 403, 702 and 1200.) Hernandez' only knowledge of Enarson's alleged tickets and upgrades comes from other people. (Hernandez Depo. 687:4-15 [Exh. 2].) Further, this fact is irrelevant because it does not state that Enarson actually received any of the alleged requested items.
23		
24	Plaintiff's depo. 687:4-15	
25		
26		
27		
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1 Dated: November 9, 2007

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